INDEX.

	Page.
Statement	1
Assignment of errors	3
Argument	5
I. The finding of the Dawes Commission was subject to impeachment at the suit of the United States for fraud or mistake	5
II. The evidence establishes, and the courts below should have found, that Thomas Atkins was a myth; hence the patent issued in his name conveyed no title	14
(a) Evidence relating to proceedings before the Dawes Commission	17
(b) The evidence on the question whether Thomas Atkins was a myth	23
(c) The case presented by the Minnie Atkins interests is a fabrication	37
The Nancy Atkins claim	54

CITATIONS.

STATUTES:	
Act of March 1, 1901, 31 Stat. 861	17
Act of February 13, 1911, 36 Stat. 901	16
CASES:	
Bartlett v. *Atkins*, 169 Pac. 1076	24
Blackburn v. *Crawfords*, 3 Wall. 175	58
C. R. I. & P. Ry. Co. v. *Callicotte*, 267 Fed. 799; 255 U. S. 570	8
Colorado Coal Co. v. *United States*, 123 U. S. 307	9
DeCambra v. *Rogers*, 189 U. S. 119	6
Diamond Coal & Coke Co. v. *United States*, 233 U. S. 236	7
Estes v. *Timmons*, 199 U. S. 391	6
Flora v. *Anderson*, 75 Fed. 217	58
Fulkerson v. *Holmes*, 117 U. S. 389	58
Heckman v. *United States*, 224 U. S. 413	9
Hilton v. *Guyot*, 159 U. S. 113	8
Iowa Land & Trust Co. v. *United States*, 217 Fed. 11	10
Johannessen v. *United States*, 225 U. S. 227	7
La Motte v. *United States*, 254 U. S. 570	9
Love v. *Flahive*, 205 U. S. 195	6
McCaskill Co. v. *United States*, 216 U. S. 504	7
Marshall v. *Holmes*, 141 U. S. 589	8
Maxwell Land-Grant Case, 121 U. S. 325	9
Moffat v. *United States*, 112 U. S. 24	10
Northern Pac. Ry. Co. v. *King*, 181 Fed. 913	58

	Page.
Pickford v. *Talbott*, 225 U. S. 651	13
Ross v. *Day*, 232 U. S. 110	6
Ross v. *Stewart*, 227 U. S. 530	6
Scott v. *McNeal*, 154 U. S. 34	11
Thomas v. *Wyatt*, 25 Mo. 24	10
United States v. *Atkins*, 268 Fed. 923	3
United States v. *Minor*, 114 U. S. 233	7
United States v. *Ness*, 245 U. S. 319	7
United States v. *Wildcat*, 244 U. S. 111	6
Vance v. *Burbank*, 101 U. S. 514	6
Vitelli & Son v. *United States*, 250 U. S. 355	15
Washington Securities Co. v. *United States*, 234 U. S. 76	7
Wells Fargo & Co. v. *Taylor*, 254 U. S. 175	8

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, Appellant, v. MINNIE ATKINS ET AL. } No. 45.

NANCY ATKINS, H. A. RIDGWAY, Guardian of Nancy Atkins, et al., Appellants, v. THE UNITED STATES OF AMERICA, Minnie Folk, née Atkins, et al. } No. 46.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Pursuant to authority conferred under several acts of Congress to enroll citizens of the Five Civilized Tribes, the Dawes Commission listed the name of Thomas Atkins as representing a blood citizen of the Creek Tribe of Indians; thereafter, that name was

enrolled on the final roll of Creek citizens which was approved by the Secretary of the Interior, and subsequently an allotment of land was selected for him. Patent therefor was issued in 1903 and recorded as required under the law.

Asserting that Thomas Atkins was a myth and never had any existence; that the enrollment of his name was procured through fraud and was the result of a gross mistake of law and fact, the United States brought suit to annul the allotment certificate and patent and to quiet title in the Creek Nation to the land against various claimants under instruments specified in the bill of complaint. (R. I, 10–12.)

A large number of persons were made parties defendant to this suit, and from the pleadings this remarkable situation was presented:

Defendant Minnie Atkins claimed that she was the mother and heir of Thomas Atkins, deceased.

Nancy Atkins, another defendant, claimed that she was the mother and heir of Thomas. She filed a cross bill asking a decree against the United States and all other parties except those claiming through her.

Henry Carter asserted that he was the identical Thomas Atkins, the son of Minnie Atkins, enrolled by the commission.

Upon the issues presented the District Court ruled that the fraud must be of such a character as precluded a party from introducing evidence in an adversary proceeding and not merely the presentation by a party of false evidence.

On the question of whether Atkins was a myth, it was held that as it was a necessary qualification for enrollment that one be living on April 1, 1899, Atkins's enrollment was a finding by the commission to that effect and hence could not be attacked. The result was that the United States was denied participation in the case on these questions and the court refused to annul the patent. (R. I, 130–142.)

Voluminous testimony was taken on the cross issues as between Minnie and Nancy Atkins and Henry Carter, and the court found and decreed that Minnie Atkins was the mother of Thomas and that she was the owner and entitled to the possession of the land involved as against all the defendants and complainants, subject only to the right, title, and interest of defendants Charles Page and Edward C. Hanford, who claimed through her. The title of these three persons in the property was quieted as against all the other parties to the suit. (Opinion, R. I, 143–146; Decree, R. I, 146–151.)

From this decree both the United States and Nancy Atkins appealed to the Circuit Court of Appeals, where the decree was affirmed (R. VI, 5005–06; Opinion, R. VI, 4996–5004; 268 Fed. 923). Appeals were then taken to this court.

ASSIGNMENT OF ERRORS.

The errors assigned by the United States are fifteen in number (R. VI, 5013–14), but may be summarized as alleging error in the affirmance by the Circuit Court of Appeals of the decree of the District Court, and its

concurrence in the conclusions and findings of the District Court in—

1. Decreeing and finding that Thomas Atkins was a real person, the son of Minnie Folk, née Atkins, and that she and her heirs are entitled to the land in controversy subject only to the rights of Page and Hanford claiming through her.

2. Holding and deciding that the action of the Dawes Commission in enrolling the name Thomas Atkins and in alloting land in his name was conclusive upon, and not subject to attack by, the United States for fraud and mistake and that said action could operate to vest title in a fictitious person.

3. Not finding that the evidence established that the alleged Thomas Atkins never had any existence and was a fictitious person, and in not decreeing a cancellation of the patent issued in his name.

4. In making any findings of fact as against the United States after its bill had been dismissed and in considering, as between Minnie Atkins on the one side and Nancy Atkins on the other, the evidence which had been introduced theretofore by the United States to establish that Thomas Atkins was a myth.

Under this assignment of errors, we submit the following propositions:

I. The finding of the Dawes Commission was subject to impeachment at the suit of the United States for fraud or mistake.

II. The evidence establishes, and the courts below should have found, that Thomas Atkins was a myth. Hence the patent issued in his name conveyed no title.

ARGUMENT.

I.

The finding of the Dawes Commission was subject to impeachment at the suit of the United States for fraud or mistake.

Upon the point that fraud had been perpetrated on the commission the Government's bill alleged that through the connivance of Minnie Atkins the name Thomas Atkins was placed upon the 1895 roll of Creek citizens as a member of her family. (Par. V [b] of complaint; R. I, 6–9.) The materiality of this lay in the fact that the Dawes Commission, in preparing the final citizenship roll from which allotments of Creek tribal lands were made, relied upon and accepted this 1895 roll as evidence showing those who were entitled to enrollment. When the commission enrolled Thomas Atkins it had adopted a rule whereby it listed for enrollment the names of all those appearing on the 1895 roll concerning whom nothing definite was known.

The pay roll of 1895 was made up, under the supervision of the National Council, for the purpose of making per capita payments to members of the Creek Tribe from a fund of $200,000 appropriated by Congress.

Upon objection by defendants to evidence introduced by the Government to show fraud, the District Court ruled that the fraud which would subject a finding of the Dawes Commission to attack must be not fraud in the presentation of evidence but

fraud which would prevent a full hearing by the commission. Reliance for this view was placed upon those cases of which *Vance* v. *Burbank*, 101 U. S. 514, is typical, which hold that, to set aside as fraudulent the finding of a tribunal made in an adversary proceeding, the fraud must be such as to have prevented the unsuccessful party from exhibiting his case fully to the tribunal. This view was concurred in by the Circuit Court of Appeals.

Now, we think the courts below were clearly in error in applying the principle of that line of cases to this case. The fundamental error was in considering the proceedings of the commission as adversary. Had there been a hearing with the United States or the Creek Tribe actively contesting the enrollment of the name Thomas Atkins, had witnesses been heard on the question of whether he ever existed, the decision of the commission would have been impervious to attack under the rule announced in *Vance* v. *Burbank*, as supplemented by the decision in *United States* v. *Wildcat*, 244 U. S. 111.

The rule of *Vance* v. *Burbank* has only been applied, in this court at least, to cases where there has been a contest proceeding where full hearing has been had and testimony introduced or the opportunity to do so given. *De Cambra* v. *Rogers*, 189 U. S. 119; *Estes* v. *Timmons*, 199 U. S. 391; *Love* v. *Flahive*, 205 U. S. 195; *Ross* v. *Stewart*, 227 U. S. 530; *Ross* v. *Day*, 232 U. S. 110, and others are examples of the application of that rule.

The District Court, however, seemed to consider the fact that the Creek Council had notice of the proceedings before the commission and hence might have made objection to the enrollment of any name rendered the proceeding an adversary one. Mark, the notice was not as to this specific individual case but general notice or knowledge that the Dawes Commission was making inquiry and determination upon which to predicate enrollments generally.

But that can not be the criterion by which a proceeding can be judged to be *ex parte*. The Government has fully as much notice of proceedings to acquire public lands as it had of the Dawes Commission proceedings, and yet the former are held to be *ex parte*, and fraud intrinsic therein is held ample basis for relief in equity. *McCaskill Co.* v. *United States*, 216 U. S. 504; *Diamond Coal & Coke Co.* v. *United States*, 233 U. S. 236; *Washington Securities Co.* v. *United States*, 234 U. S. 76.

The same is true of naturalization proceedings. *Johannessen* v. *United States*, 225 U. S. 227; *United States* v. *Ness*, 245 U. S. 319.

Certainly the proceedings before the Dawes Commission were at most of no greater dignity than those attending the acquisition of public lands, or the proceedings for a naturalization certificate.

In *United States* v. *Minor*, 114 U. S. 233, a suit to cancel a patent for fraud, this court distinguished *Vance* v. *Burbank* and definitely pointed out the scope and extent of the rule of the latter case. It

explicitly held that that rule applied to cases where "a contest between individuals, for the right to a patent to public lands, has been brought before these officers, and both parties have been represented and had a fair hearing" (p. 243).

That the rule of *Vance* v. *Burbank* is limited to cases where there has been a hearing in which the issues sought to be impeached have been tried, is evidenced by a later statement in *Hilton* v. *Guyot*, 159 U. S. 113, 207:

> It has often, indeed, been declared by this court that the fraud which entitles a party to impeach the judgment of one of our own tribunals must be fraud extrinsic to the matter tried in the cause, and not merely consist in false and fraudulent documents or testimony submitted to that tribunal, *and the truth of which was contested before it and passed upon by it.* [Italics ours.]

The case of the *C. R. I. & P. Ry. Co.* v. *Callicotte* (C. C. A.), 267 Fed. 799 (certiorari denied, 255 U. S. 570), is illuminating as to the extent to which equity will go to relieve from judgments obtained by fraud, even in litigated cases. See also *Marshall* v. *Holmes*, 141 U. S. 589; *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183.

The decision in *United States* v. *Wildcat* is not to the contrary, for it is plainly limited to cases other than those involving fraud or mistake. It was there said that in order to impeach the decision of the Dawes Commission for fraud or mistake, the proof must be full

and convincing, sufficient within the recognized principles of equity jurisdiction in cases of this character (p. 120). The significant part on that point is that the two cases cited by the court on the latter proposition, *Maxwell Land-Grant Case*, 121 U. S. 325, and *Colorado Coal Co.* v. *United States*, 123 U. S. 307, are cases in which it was sought to set aside patents for fraud similar to *United States* v. *Minor*, and *Washington Securities Co.* v. *United States, supra*. It is clear, therefore, that the court did not intend to adopt the rule of *Vance* v. *Burbank* as the sole and controlling rule in cases of fraud on the commission.

The courts below considered the Creek Nation as the real party in interest so far as the allotment and patenting of the lands were concerned, and held the United States to the same rule that they thought applied to the nation. However, there can be no doubt of the capacity of the United States to bring this suit in its own right. It was supervising and making the enrollment and allotments pursuant to its solemn covenant and agreement with the Creeks and therefore executing a public policy. Its interest is not to be confined to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust nor because it is without pecuniary interest. *Heckman* v. *United States*, 224 U. S. 413, 437; *La Motte* v. *United States*, 254 U. S. 570, 575.

Independently of the question of fraud we contend that if no such person as Thomas Atkins ever existed, the enrollment of that name as a citizen of

the Creek Nation and the allotment and patenting of a tract of land in his name was a nullity, conveyed no title, and that no rights or interest thereunder could vest in any person. In the last analysis of the case under this theory the United States is asserting, as against all these defendants, that Thomas Atkins had no heirs for the very good reason that he never existed, and that those claiming to be his heirs are not such, and consequently take nothing by the action of the Dawes Commission and can convey no interest in the land. *Cf. Iowa Land & Trust Co.* v. *United States*, 217 Fed. 11.

It is well established that a conveyance or patent to a fictitious person conveys no title and there can be no *bona fide* purchaser from such patentee or grantee. *Moffat* v. *United States*, 112 U. S. 24; *Thomas* v. *Wyatt*, 25 Mo. 24. In order to effectuate a transfer there must be one capable of receiving it.

Suppose there were a conveyance of restricted Indian lands by a stranger to the title. Would there be any doubt of the right of the United States to maintain a suit to remove the cloud cast upon the title by that conveyance? That is precisely the situation in this case: The Government asserts that all the parties defendant are strangers to the title to this land. Surely it is entitled to be heard on that issue.

Now, it will not avail to say that the United States, through the Dawes Commission, had control of the allotting of the lands of the Creek Nation and therefore had jurisdiction of the subject matter. In

the *Moffat* case the United States likewise had jurisdiction of the patenting of public lands, and yet the action of the Land Department in issuing patents to fictitious persons was held to convey nothing. The Land Department had no authority to convey public land to a fictitious person; neither had the Dawes Commission authority to allot lands to mythical persons.

The principle which in our view is applicable to this case is that of *Scott* v. *McNeal*, 154 U. S. 34. There it was decided that a purchaser at a sale of property made pursuant to an order of a probate court, acting upon the estate of a person supposed to be dead but in reality alive, conveyed no title as against the latter. If, as there held, the true owner could not be divested of property by an order of a court entered upon the theory that he *was dead*, we think it equally true that the rightful owner of the land here involved—the Creek Nation—could not be deprived of its property as a result of a decision based on the assumption that Thomas Atkins was living, when he never existed. The jurisdiction of the Dawes Commission depended on the existence at some time, at least, of those enrolled by it.

The courts below, however, took the view that, as the Dawes Commission enrolled the name Thomas Atkins, that pre-supposed a finding that such a person existed, since the law provided that only those living on April 1, 1899, should be enrolled; consequently

that the proof tendered by the Government as to the nonexistence of Thomas Atkins constituted an attack upon that finding, and could not be admitted under their interpretation of the decision in the *Wildcat* case.

But if it be considered an attack upon that finding, we assert that this case is one of the class excepted from the effect of that decision, and that it can be further distinguished from that case.

As has already been pointed out, the decision in the *Wildcat* case specifically excepted cases of fraud and mistake. In that case no question was raised of the existence of Thlocco, the allottee, but it was contended that he died prior to April 1, 1889. That is very different from the assertion that he never existed.

In the *Wildcat* case, one basis for the upholding of the finding of the commission was the protection of *bona fide* purchasers. Thlocco had heirs and this court took the view that those purchasing from his heirs and relying upon the action of the commission should not be disturbed. In this case the purchasers must have at their peril established the existence of heirs, and, if Atkins in fact had no heirs, their situation is as if they took from a stranger to the title.

But if we clothe the finding of the Dawes Commission with all the dignity of a judgment in an adversary proceeding, there is yet another ground upon which the Government is entitled to relief. It is on the well established principle that equity will grant relief against a judgment, the enforcement of which

would be unconscionable, or which was rendered through mistake or accident, the party seeking relief not knowing of the existence of a defense or being prevented from availing himself of it by accident or mistake.

This principle was so ably discussed not long since in *Pickford* v. *Talbott*, 225 U. S. 651, 658, *et seq.*, as to make unnecessary a citation of cumulative authorities. It is proper only to apply the principle to the present situation.

When the Dawes Commission enrolled the name of Thomas Atkins, the Government had no knowledge of his nonexistence, nor was there anything to put it upon inquiry on that point. If it, or the Creek Nation knew the fact, it would have made the point before the commission. If Thomas Atkins was a myth, it surely is against conscience to give force and validity to the finding of the Dawes Commission and to permit the Creek Nation to be deprived of a part of its lands. The Government therefore was entitled to be heard upon the question whether Thomas Atkins was a myth and had no existence.

The action of the trial court in excluding evidence on that point was error, as was its action refusing to hear the Government on the question of fraud.

II.

The evidence establishes, and the courts below should have found, that Thomas Atkins was a myth; hence the patent issued in his name conveyed no title.

The situation presented in this case is unusual and arose in this wise: Practically all the testimony had been taken on the issues raised by the pleadings when the decision of this court in the *Wildcat* case was announced, whereupon the trial court ruled that the United States was not entitled to be heard on the question of fraud on the commission or on the question whether Thomas was a myth. This resulted in a dismissal of the Government's bill. (Memorandum opinion of district judge, R. I, 130 *et seq.*) Notwithstanding that ruling, the court proceeded to consider all the evidence adduced upon the issue of whether Thomas was a myth and rendered a decree as between Minnie Atkins and Nancy Atkins. This action was approved by the Circuit Court of Appeals.

Now, if we are correct in our view of the law, the findings of the courts below are divested of their force and ought not to be given the presumptive effect usual in ordinary cases. This for the very good reason that they were arrived at under an erroneous view of the law. They start with the existence and eligibility for enrollment of Thomas Atkins, established beyond gainsaying by the action of the Dawes Commission. With this false start, no question being in the minds of the court of the existence

of Thomas, it became merely a matter of deciding which of two persons, Minnie or Nancy, was his mother. Thus the courts below did not pass upon the evidence without prejudice, for their mental vision was clouded and obscured by the error in holding the action of the Dawes Commission to be unimpeachable. By reason of this fundamental error, the foundation of the finding is vitally weakened and becomes an unstable support, the vice of that error permeating the entire structure.

The situation is, in principle, like that in *Vitelli & Son* v. *United States*, 250 U. S. 355. There it was sought to uphold a reliquidation of certain imports made by the collector of the port, on the ground that although under the statute the power to reliquidate rested upon the existence of fraud, yet the presumption attending his acts cast upon the importer the burden of showing that no fraud had been committed. It was further contended that although the statute had been erroneously construed below, nevertheless as the record showed fraud, the reliquidation should be sustained. This court held (p. 359) that the erroneous construction of the statute dominated the entire situation, and ordered that the case should be given consideration "disembarrassed from any mistaken construction as to the presumption created by the statute."

In addition to that, we think it wholly unwarranted for the courts below, after shutting the United States out of the case, to consider the evidence adduced by it and determine thereon an issue against it.

Again, there was no finding against the Government on the facts by the District Court. When it considered the facts the Government was already out of the case by virtue of the ruling of the court denying its right to be heard.

The Circuit Court of Appeals, after approving the action of the District Court, did proceed to consider the evidence as if the Government were in the case, but that we submit is the only court which made a finding of fact against the Government.

For these reasons the rule is inapplicable here that findings of fact concurred in by two courts below will not be disturbed by this court unless shown to be palpably erroneous. But in any event we believe the case comes within the exception and that the findings below can be shown to be palpably erroneous.

Before proceeding to a discussion of the evidence, we wish to express regret that the record in the case is so voluminous. When the record on appeal to the Circuit Court of Appeals was being perfected, the Government requested that it be printed pursuant to the act of February 13, 1911, 36 Stat. 901, in diminished form (R. VI, 4972), but the trial court on motion of counsel for the Nancy Atkins interests, ordered that it be printed in full without abridgment (R. VI, 4960–61). Our judgment is that it would have been possible to have diminished the record at least one-half and probably two-thirds.

However, in the hope that it may aid the court, we have prepared a digest of all the material

evidence. We have tried to present that of the defendants as faithfully as that of the Government and have not intentionally slurred any deemed significant. This digest is printed as an appendix, and in our discussion we make reference to it and also to the record.

We think in the proper presentation of the case we should first refer to—

(*a*) **Evidence relating to proceedings before the Dawes Commission.**

The enrollment of the Creeks had not proceeded as rapidly as had been hoped; many Creeks were reluctant to accept allotments and did not present themselves before the Dawes Commission for allotment.

When the act of March 1, 1901, c. 676, 31 Stat. 861, the original Creek agreement, was being considered for ratification by the Creek Council at Okmulgee in May, 1901, the commission opened a temporary office there to carry on a "drive" for enrollment. Special efforts were made to get members of the tribe and heads of families to appear before it. A few days before the agreement was ratified (May 25, 1901) the established rule of the commission requiring personal appearance was lifted. This was done because of the opinion entertained by some that those not enrolled when ratification was effected could not be thereafter.

During those last few days previous to ratification the commission adopted this plan: They took the 1890 and 1895 tribal pay rolls and made a card for

every name on those rolls which was unaccounted for—every name not already enrolled; personal appearance of the enrolled or any member of his family was not required; in so far as they could they secured information concerning these names from some warrior, town king, or member of the tribe; if they had information that any name was *not* entitled to enrollment, they did not put it upon a card, otherwise they did. During this "rush" about 500 names were enrolled per day.

The Thomas Atkins enrollment card, Govt. Ex. A–1 (R. VI, 4652), was made up from the 1895 tribal pay roll. (Testimony Hopkins, R. I, 182–213; Hastain, R. I, 237–253; Lieber, R. I, 253–265; Bixby, R. I, 266–280; Digest 3.)

The 1890 and 1895 rolls were made up from town rolls, submitted by the constituent towns of the Creek Nation; Thomas Atkins was enrolled on the Euchee Town roll.

Samuel W. Brown, town king of Euchee Town, states that when the 1890 roll was made up at a convention of the townspeople, the names of Minnie and Nancy Atkins were placed thereon; Thomas Holden, brother-in-law of Minnie, stated that she had two children; it was decided to place the two upon the roll; the Christian names of the two children were not given; the words "Thomas and Mary" were not written above the words "two children" at that convention, nor were they there when the council approved the roll.

The names Ed Schrimsher, Minnie Atkins, Charlie, Susan, *Thomas*, Nancy, and Mary were placed upon the 1895 roll by Brown upon information furnished him by John Davis, Minnie's uncle, of whom he inquired if he knew the "remnants" of the Atkins family; Davis said he did and gave Brown a list containing those names; he did not state what was the relationship between the ones on the list.

This roll was considered by a committee appointed by the Creek Council, which, in passing on the town rolls, asked the town king and warriors concerning them. Brown doesn't know that the Atkins family was discussed before the committee "because we never had much trouble with our rolls—always tried to get it right, and we stated that is all we could get up and they accepted it." This committee reported to the council and if the council found the rolls correct, they were approved.

Brown knew personally all the old members of Euchee Town but not all the young ones; did not know any Euchee named Thomas Atkins except Minnie's father; never knew or saw a boy named Thomas Atkins, who claimed to be Minnie's child. He recalls payment to Minnie on the 1895 roll—she received payment for four—Govt. Ex. A–2 (R. VI, 4652); Brown drew for Schrimsher and Nancy Atkins; when Minnie drew the money she did not say those she drew for were her children—Brown supposed they were. Brown was interrogated at Okmulgee by the Dawes Commission clerks about

unaccounted-for names from Euchee Town, but does'nt recall giving any information regarding Thomas Atkins. (R. I, 214–232; Digest 7–9.)

Noah G. Gregory was town king of Euchee Town in 1890; he was at Okmulgee in May, 1901, when the Creek agreement was under consideration; was called to help the Dawes Commission in enrolling names and to correct the town rolls which he had; went over the Euchee roll with Hopkins of the commission; when they came to Minnie Atkins's name Gregory said the last he had heard of her she was in Colorado, didn't know whether she was living, had tried to find out but couldn't locate her; Gregory knew that Minnie had two children (Harvey and Charlie) living with Holden. Nancy Atkins was not at Okmulgee at that time, nor was Holden or any member of Minnie's immediate family. He never knew any member of Euchee Town named Thomas Atkins. (R. I, 232–237; Digest 10.)

Larry Brown, Chicken (Dixon), and George Clinton, who were in the house of warriors, representing Euchee Town, and who in addition to Sam Brown constituted the official representatives of Euchee Town, with Noah Gregory as town king, all testify to being present at Okmulgee in May, 1901, but that they were not called before the Dawes Commission for any purpose nor did they talk with any of the clerks of the commission. Chicken states that he told the clerks of the commission that Sam Brown made up the roll. None of these knew Minnie, Nancy, Lee, or Thomas Atkins.

Edward Merrick, the employe of the Dawes Commission who made out the card of Thomas Atkins on May 23, 1901, made an investigation and was unable to find any record in the office of the commission relative to that record other than the tribal roll prior to May 23, 1901. There was no old census card in this case; the name Thomas Atkins was put on a card because it was on the 1895 tribal roll; most of the cards written out in the last few days contained only the name and tribal roll. Doesn't know where information as to age, blood and parentage appearing on card came from, but must have come from sources besides 1895 roll, from what some one told him. (R. V, 3451–80; Digest 4–6.)

Minnie Folk (Minnie Atkins) in her Seattle testimony stated she had Thomas Atkins put on the 1895 roll by her uncle, John Davis; such was her testimony at Sapulpa, in a case in the state court between Nancy Atkins and herself, although she denied at the trial the Sapulpa testimony. (R. V, 3993; Digest 209.) According to the testimony of Sadie James, Minnie told her that the name Thomas Atkins represented her father who had been dead 17 years. (R. 559; Digest 26.)

It is not clear just how or by whom the information came which resulted in placing the name Thomas Atkins on the 1895 roll. While Brown positively states that he received it from John Davis when making up the roll, yet the record discloses (R. VI,

4987–88) that from 1891 to 1896 Davis was in the penitentiary. This fact would also cast doubt upon Minnie's statement that she had Davis put Thomas on the roll.

However, the District Court specifically found that Minnie had conveyed information of the birth of Thomas to relatives in the Indian Territory, which resulted in his being placed upon the 1895 roll. (R. I, 145.) If the court was correct in that finding, or if Minnie instigated Thomas's enrollment, and he was a myth, she was responsible for a fraud upon the Creek Nation and upon the Dawes Commission for which the Government was entitled to relief, regardless of who was the medium through whom the information was communicated.

If Thomas Atkins was a myth, it is an inescapable conclusion that his enrollment was the consequence of fraud and false representation.

But we wish to make clear to the court that the Government's case does not depend upon the establishment of the particular manner in which the fraud was perpetrated. We are content to rest it upon the other grounds specified. We have discussed the fraud feature because of a desire to secure a ruling as to the character of the proceedings before the Dawes Commission, and to overcome the effect of the ruling below that those proceedings are adversary, and that *fraud extrinsic* alone is a basis for attacking them.

(b) The evidence on the question whether Thomas Atkins was a myth.

The case on the facts presents, as against the Government, the conflicting claims of two different interests to the land, namely: (1) Minnie Atkins, claiming as the mother and heir of Thomas Atkins, deceased, whose interest has been acquired by Charles Page; (2) Nancy Atkins, also claiming as mother and heir of Thomas Atkins, deceased, who asserts title subject only to a lease executed by her under order of the county court of Nowata County, Okla., the interest in which is now held by Rutherford and Ferguson.

The trial court found against the claim of Henry Carter, decreed him not to be Thomas Atkins and to be entitled to no interest in the property in controversy. No appeal therefrom was taken and that interest is now out of the case. When referred to herein it is only in connection with the other phases of the case.

It may lead to a better understanding of the situation out of which this controversy arose to make at this time a brief general statement, the correctness of which we believe will be conceded.

One H. U. Bartlett had taken a deed to the land, purporting to have been executed by Minnie Atkins October 21, 1912. (Government Ex. A–58, R. VI, 4731.) The following month Bartlett executed an oil and gas lease to the Gypsy Oil Co. (Govt. Ex. A–59, R. VI, 4732–36); the Gypsy went upon the

land and started a well December 25, 1913, in which oil was discovered January 23, 1914. (R. I, 315.)

It developed that the deed to Bartlett was a forgery (see *Bartlett* v. *Atkins*, 169 Pac. 1076). Bartlett was anxious to cure his title, and to that end employed one Betty or Sadie Mann to endeavor to locate Thomas Atkins, the allottee. In March, 1914, Betty met Sadie James and informed her of her employment; Betty put Sadie in touch with Bartlett and Sadie was also employed on the investigation. She decided to locate Minnie Atkins if she could, and in June, 1914, succeeded in doing so at Fort Lawton, Seattle, Wash. On this western trip Betty Mann accompanied Sadie, but just before leaving Sapulpa or Tulsa Betty met Long, who was working in the interest of defendant Page and agreed with him that should Minnie be found she would advise Long. (R. II, 1063–64.)

When Sadie interviewed Minnie at Seattle she made an offer on the part of Bartlett for a lease from Minnie, and it was tentatively agreed that the latter would deal with Bartlett when he arrived. In the meantime Betty, to whom Sadie had not confided her discovery of Minnie, being suspicious of her, had had Sadie shadowed and learned of Minnie's whereabouts. She communicated with Long, who arrived before Bartlett and made an offer of $4,000 for a lease to the Gem Oil Company, in which Page was the controlling factor.

Captain McNab, an officer at Fort Lawton, became interested in the matter, summoned one Hanford, an

attorney at Seattle, and together they induced Minnie to execute a deed of trust to McNab, so that all dealings relating to the land would be looked after by him. McNab and Hanford would not execute the lease to the Gem Oil Co. but stated to Long that they desired to investigate. After conferring with Long, Hanford and McNab guaranteed to Minnie, who was anxious to get immediately the $4,000 offered, that she would receive $5,000 if she would wait and abide their judgment.

Hanford in company with Long went to Oklahoma to investigate the value of the property. Long furnished expense money under an agreement that he should be repaid in the event a lease was not executed to the Gem Oil Co. They arrived in Oklahoma on Sunday morning, spent most of the day with Page and one of his attorneys discussing the leasing of the property; Monday, Hanford made some investigation of the suit in the state court brought by Nancy Atkins to quiet title to the land in controversy; Tuesday, with Long, made some investigation of the Dawes Commission records, and on Tuesday evening wired McNab to execute the lease to the Gem for a consideration of $10,000, which was paid to Hanford in two checks of $5,000 each; the first he cashed, keeping $3,000 for himself to cover expenses, as he says; the $2,000 balance he turned over to McNab. The second check was made payable about a month later, for the asserted reason that Page was not satisfied of the identity of Minnie.

Long and Hanford returned to Seattle to get further data from Minnie regarding her past life. (Hanford, R. V, 3689–3702.) Thereafter Minnie gave statements and evidence so varying and conflicting in character that we treat them in detail. So far as the Minnie Atkins interests are concerned, the controversy centers about the alleged birth of Thomas to Minnie in Leavenworth, Kans., in the year 1885.

There is and can be no dispute that Minnie Atkins was a pupil in Carlisle Indian School from January, 1881, to July 8, 1884. The records of the school establish that. (R. I, 332–333; Digest 14.) When she left Carlisle it was to enter the employ, as a domestic, of George H. Hyde, a banker of Leavenworth, Kans. She arrived there on July 10, 1884, as is shown by a post card dated July 11, 1884, addressed to the superintendent of the school by Hyde, reporting her arrival on the previous day. (Govt. Ex. 15, R. VI, 4859.)

It is also established beyond all controversy that Minnie gave birth to a child, Robert Lee Peterkin, at the home of Mrs. Wood in Leavenworth on July 31, 1886; the child lived but a few weeks. Testimony of Peterkin R. I, 425; Digest 18–20; Mary K. Allen R. I, 462–463; Digest 20; baptismal records, R. I, 475–476; Digest 21; burial records, R. I, 479; Digest 21.

The contention of the Government is that this was her first child, but the *final* claim made by

Minnie was that she had a child previous to that, Thomas, whose place of birth she ultimately gave as Granny Letcher's at 217 Seneca Street, Leavenworth, in the summer of 1885. (R. V, 3911; Digest 190.) This last testimony before the court was the fifth given by Minnie in court proceedings. It was the eighth statement she had made about the matter. The first statement was made in July, 1914, to Hanford and Long, representing Page, soon after the lease had been given to the Gem Oil Company. She then stated she went to Leavenworth in 1882, worked four years (three for Grodevant, one for Stafford); left latter's and had the boy, Thomas; born at the Sisters Hospital in the summer of 1886 or 1887; she stayed in Leavenworth one year after his birth. (Long R. V, 3516–17; Digest 156; Govt. Ex. A–112, R. VI, 4832.)

The second time she told of the matter was at Sapulpa in July, 1914, in a suit pending in the state court between the Minnie Atkins interests and the Nancy Atkins interests. There she testified that she never gave birth to any child except Thomas, Harvey, Charlie, and Alice (R. V, 3946; Digest 198); she went from Carlisle School to Hydes for three months, then to Grodevants at Fort Leavenworth for one year and six months; then at Lieutenant Stafford's a year, and left there because she was with a baby by name of Tommy Atkins (R. V, 3948; Digest 199); she left Stafford's to go to the Sisters Hospital to give birth to the child (R. V, 3949, Digest

199); after she left the hospital she carried him to a lady to care for him during the day while she went out to work, returning to the baby after work (R. V, 3957; Digest 201). [Upon this computation, starting with July, 1884, as the time of her arrival in Leavenworth, this would bring the birth of Thomas in April, 1887.]

The third time she told the story was after search had been made of the records at the Sisters Hospital and it was ascertained that no maternity cases were taken there prior to 1890 and that Minnie's only stay there was in October, 1886. (R. V, 3609; Digest 162; Gov't Ex. A–81, R. VI, 4779.)

She was then brought to Kansas City, where she was interviewed by Hanford, Josey, Rice, and Long, representing Page interests. A statement dated September 29, 1914, was taken (R. V, 4044). In that she stated that she went to Leavenworth from Carlisle and worked for Hyde; Grandma Spain and Mrs. Hamilton, her daughter, were the women she knew in Leavenworth (R. V, 4049–50; Digest 212); she stayed at Hydes three months; then went "knocking around," stayed a good deal at Granny Letcher's; worked a few weeks for a rich Jew before she went to Granny's; Granny was pretty near white, but a colored woman; she lived on Seneca Street; there was a corner saloon near and a livery stable; asked if livery was Crilly's she answered, "some such name as that"; remembers a grocery store run by Rube Smith near by (R. V, 4051; Digest 212);

Granny had a one-armed boy named Sam Nash and a boy named Walter around the house; she was at Granny's about three months before her child was born; she was going with two men then but did not remember their names; Thomas, her first child, was born there in the winter of 1885; she borrowed the money from Rube Smith to pay the doctor; she would not tell the name of the father of Thomas; she stayed at Granny's (around Leavenworth) for about a year after the child was born; the child nursed at the breast and during the time he was nursing no men came to see her. (R. V, 4053–55, 4057; Digest 213.) She first worked at Fort Leavenworth for Grodevants, then for Staffords, for whom she was working when she took up with Peterkin. (R. V, 4060; Digest 213.)

After procuring this statement from Minnie she was taken by the Page interests to Tulsa where, in October, 1914, she gave a deposition at the office of Rice & Lyons, Page's attorneys, for use in the state court case.

In the Tulsa deposition she testified that she went from Carlisle to Leavenworth, worked five months for Hyde; that a child (Thomas Atkins) was born to her at Granny Letcher's; she remained a year in Leavenworth, then went to Fort Leavenworth; worked for Grodevants a year, then a few months for Staffords; Tommy was a year and a half old when she left Leavenworth to go to Fort Logan; she left him at Letcher's; she never saw him after that but heard

when in Detroit that he was dead; she knew after she went to Hydes that she had Tommy and went to Granny's; the child was born two years after she came to Leavenworth; that she testified at Sapulpa that the child was born at the Sisters Hospital because Granny didn't run a very good house and not because she was a negress; while at Grodevants and Staffords she went to Granny's all the time. (R. II, 1304–1307; Digest 53.)

[According to this statement Thomas was born in 1886, July or August, since she arrived in Leavenworth in July, 1884; but the fact is she had Robert Lee Peterkin on July 31, 1886.]

On December 17, 1914, Minnie, at Seattle, Wash., made what is sometimes referred to as her confession to Montgomery, who was representing the Creek Nation. In that statement, given in the presence of Hanford, Montgomery, and McNab, she declared that no child was ever born to her by the name of Thomas Atkins, or Tommy Atkins, and that the Thomas Atkins for whom she drew the "grass money" (1895 pay roll) was her father; that she was the mother of only three children—Mabel, or Alice Peterkin, Charlie Harrison, and Harvey Harrison. (R. II, 1374; Digest 55.)

The receivership hearing in March, 1915, was the first court proceeding wherein the United States was a party. In that hearing Minnie gave the following testimony: When she left Hydes she was "with" Tommy Atkins; she was down in the city about a

year after leaving Hydes before she went to Grodevants; slept at Granny's a lot during that year (R. V, 3980–81; Digest 206); nursed Tommy at Granny's for about six months (R. V, 3967; Digest 203).

In a deposition given at Seattle, Wash., before Examiner Penick in this case, Minnie gave this version:

That she had Tommy put on the 1895 roll by her uncle, John Davis, as Thomas Atkins; she hadn't named Tommy Atkins (R. V, 3997; Digest 209); at the time she drew the money on the 1895 pay roll she had had five children born to her (including Mabel or Alice, who had died, and what she called a premature birth, Robert Lee Peterkin, who lived a week or ten days and who was born after Tommy.) (R. V, 4004–05; Digest 209); went from Carlisle to Hydes at Leavenworth, where she stayed three months or a little over; didn't have Tommy when she came to Leavenworth; from Hydes went to Grodevants; was at latter's two or three months, then to Lieutenant Stafford's; got Tommy at Hydes (R. V, 4008–09; Digest 209). Was in bed about two weeks at the time she gave birth to him; doesn't know the name of the doctor who attended her; Mrs. Witt washed and dressed the child (R. V, 4013; Digest 210); stayed around Leavenworth a year or more after she had Tommy, so she could go to Granny's and nurse him; she had Tommy after she left Grodevants; worked up to two months before she had him; Tommy was about 2 years old when she

left Leavenworth and went to Fort Logan; did not regard it as any humiliation to associate with Granny Letcher. (R. V, 4020–21; Digest 210.) Thinks she was carrying Thomas when she was working for Grodevants; Thomas was born between warm and cold weather; it was getting summer, but still cold. Granny lived on Seneca Street at that time. (R. V, 4034–35; Digest 210.)

On the trial of the case, Minnie gave her final story:

Became pregnant at Hydes; went from Hydes to Grodevant's; had the child at Granny Letcher's; named it Thomas Atkins after her father; a man named Lee was the father of Thomas; she couldn't remember his last name; stayed at Granny's three weeks, then returned to Grodevants; came down town every night to see the child; Thomas was about 2 or 3 years old when she left for Fort Logan; had five children in all; Thomas Atkins, the first one, then Robert Lee Peterkin, then Alice, then Charlie, and last Harvey. (R. V, 3911–12; Digest 190.) The reason she now tells for the first time the name of the father is "because they all just wanted to hang it on me that my son was a colored child." (R. V, 3917; Digest 191.) Went directly from Hydes to Grodevants and didn't stay in Leavenworth a part of the time (R. V, 3924; Digest 193); didn't know Sadie James until she came to her house at Seattle (R. V, 3929; Digest 194). Would never refer to any negro woman as a "lady" (R. V, 3957; Digest 201); Tommy born in the summer

(R. V, 3966; Digest 203); nursed Tommy at the breast for about six months (R. V, 3967; Digest 203). Doctor McCormick attended her, didn't get any pay that she knew of, doesn't know who got him; it was three weeks after the baby was born when she went back to Grodevants; came back and forth to Granny's to see baby, on the bus; would come just as soon as she could get away from Grodevants; Frank Grodevant would be late and she had to wait on him; would go back on last bus at 12.30 a. m.; bus fare was ten cents each way; would nurse the baby when she made those trips. (R. V, 3981–83; Digest 207.)

In view of these conflicting and inconsistent statements, no reliance can be placed upon Minnie's testimony as to the birth of the child Thomas. In and of themselves they constitute strong proof of the Government's claim that Thomas was a myth.

We recognize that human memory is fallible, but there are some things which are indelibly fixed upon the mind. It is incredible that any woman could fail to recall the incidents attending the time and the place of the birth of her first-born child. Yet Minnie did not place the birth of Thomas at Granny Letcher's until she told the story of Thomas the third time at Kansas City. She could tell the Christian name only but couldn't remember the surname of her acknowledged first lover, the father of Thomas. (R. V, 3920–23; Digest 193.)

We do not stop to analyze the testimony of Minnie or to consider the lame excuses which she makes for

the inconsistencies. The net result is to induce the conviction that the entire case as to the birth or existence of Thomas is a fabrication.

The Government proved and accounted for Minnie's time in Leavenworth very closely. By uninterested witnesses the following was established:

She worked at Hydes for about four or five months; Mrs. Hyde observed no signs of pregnancy nor suspected Minnie of anything of the kind; Minnie had no men associates that Mrs. Hyde knew of (R. I, 343; Digest 14); Minnie went directly from Hydes to Grodevants at Fort Leavenworth; Mrs. Hamilton testified that Minnie called upon her frequently, both while at Hydes and Grodevants, and that it was a considerable time after she left Hydes (within two years) when she noticed Minnie in a family way (R. I, 362); that was the only time she knew of her being pregnant while in Leavenworth. (R. I, 366; Digest 16.)

The Grodevant expense account kept by Herbert Grodevant, deceased (which is Govt. Ex. 1, R. VI, 4840–48), shows that Minnie received pay for services from October, 1884, and up to September 15, 1885, except for a period of about two weeks in June, 1885. Frank J. Grodevant, who lived with his brother at the time Minnie worked for the latter, states that he saw Minnie around the house several times a week and that she did not have the appearance of being in a family way. (R. I, 393–394; Digest 17.)

Mrs. Stafford stated that Minnie went to work for her in September or October, 1885 (thinks it was September 15), and worked until the following June

(1886), when she discharged her because of her condition (pregnancy); (R. I, 444–445; Digest 20); the testimony of her husband is to like effect. (R. I, 450–451; Digest 20.)

Charles Peterkin, who lived with Minnie at Fort Leavenworth, testified that he first saw Minnie to know who she was in the spring of 1885 and started living with her the second day after the discharge from the army of Oliver, who had been living with Minnie. Oliver was discharged, according to War Department records, December 18, 1885. (R. I, 441; Digest 20.) Prior to living with her and after first seeing her in the spring of 1885 he saw her about five or six times a week; Minnie showed no signs of pregnancy during that period. About a month after he commenced living with her he discovered she was pregnant about three or four months along, this pregnancy resulting in the birth of Robert Lee Peterkin in July or August, 1886. (R. I, 420–424; Digest 19.)

In the face of this evidence Minnie was driven in her last testimony, which must be relied upon by the defendants, to the extreme of asserting that she left Grodevants for three weeks to coincide with the June, 1885, expense account of Grodevant, and in that time was confined, then resumed her duties with the Grodevants, nursing her child evenings, keeping her breasts soft and relieved of milk by working them with her hands, as she had no breast pump (this operation would have to be performed about

five times during the day and each operation would take 15 or 20 minutes. R. VI, 4543–44; Digest 269); yet none of those who were in a position best to observe outward signs of pregnancy knew anything of it. Further comment would seem unnecessary.

But this is not all. Minnie, when she finally fixed the birthplace at Granny Letcher's, located the house at 217 Seneca Street, but the city directory for 1885 shows Lily White a resident at 217 Seneca Street. (R. III, 2086; Digest 85.) Lily White, who preceded Granny Letcher at 217 Seneca Street, ran a house of ill fame and that constituted such a nuisance that the neighbors circulated a petition to the city council to compel her to remove. That petition was dated July 5, 1885. (Govt. Ex. 59, R. VI, 4912–13). The council acted upon the petition at a meeting held August 5, 1885, and referred it to the city marshal with instructions to abate the nuisance. (Govt. Ex. 61, R. VI, 4914–15.) Feth testified that he drew the petition up on July 5, 1885, at the request of his father and mother, who lived at 223 Seneca Street. (R. II, 1441–47; Digest 61.)

Mrs. O'Day, who did hair dressing for Lily White's girls, and who lived back of 217 Seneca Street, testified that Lily White lived there during the summer of 1885; that she refused for business reasons to sign the petition against Lily White, which she remembers was circulated about the middle of the summer. (R. II, 1536–37; Digest 66.)

These were not all the witnesses for the Government on this question, but the testimony of the others established Lily White in the house when Minnie alleged she had Tommy there. (John Rohr, R. II, 1422, Digest 59; Eckert, R. II, 1583, Digest 67; Malone, R. II, 1481–82, 1516, Digest 62; Dassler, R. II, 1462, Digest 61.)

(c) The case presented by the Minnie Atkins interests is a fabrication.

The recorded testimony of Sadie James is an intensely human document; we do not attempt to give it in detail but touch only the high points.

Sadie knew Minnie Atkins in Leavenworth from July, 1884, to the fall of 1887 or spring of 1888. (R. I, 511; Digest 23.) Minnie denied this at the trial but had previously admitted it at the Sapulpa hearing. (R. V, 3929; Digest 194); the reason for the subsequent denial will later be obvious. She first became interested in the case in March, 1914, when she was employed by Bartlett, through the intervention of Betty Mann, to locate Thomas Atkins. (R. I, 512–513; Digest 23.) Betty told Sadie that she had been trying to find Thomas Atkins for three years and had come to the conclusion that there was no Thomas (a conclusion with which Sadie agreed), but that Sadie could secure employment from Bartlett by telling him that she knew Minnie, and where Thomas was born. (R. I, 515; Digest 24.) Sadie suggested that they frame up a Thomas Atkins, and then took Betty to the Office of Dennis Jones, a negro lawyer of Leavenworth, enlisted his help and

that of Rube Smith, his partner, neither of whom knew Minnie, to frame up a case establishing the existence of Thomas Atkins. (R. I, 517–519; Digest 24.)

Betty returned to Kansas City and Sadie went back to Jones's office, where she conferred with him and Smith and the frame-up was outlined, namely, that they would say the child was born at Granny Letcher's in 1885; Rube Smith said he would be the father; they planned to get Mary Smith, a white woman, to pose as the midwife. A white woman was decided upon because Dennis doubted that any colored woman could be procured, since "they were all too afraid of getting arrested"; Doctor McCormick was named as the attending physician, for the reason that he was dead. (R. I, 520–521; Digest 25.)

Sadie met Bartlett the next day, told him that she knew Minnie had a child named Thomas born at Granny Letcher's, and that she had last seen him when he was 5 years old. Bartlett advanced her some expense money and told her to furnish such evidence as she procured about Tommy to Betty and two detectives whom he had hired. (R. I, 522–523; Digest 25.) Thereupon Sadie returned to Jones' office, told him and Rube that she had procured a job and for them to go ahead with the plan. Dennis said they would hunt a boy of Indian color, show him around Leavenworth, and get people to swear they remembered when he was born to this Indian woman. (R. I, 524; Digest 25.) Later, Sadie suggested to Bartlett that she be allowed to search

for Minnie Atkins. Bartlett agreed. (R. I, 529; Digest 25.) Sadie had another interview with Jones, who told her that "he had got the talk started about Tommy Atkins and this Indian woman among several that he knew were all right". (R. I, 533; Digest 25.)

Sadie related how in April, 1914, after her employment by Bartlett, she interviewed several persons around Leavenworth endeavoring to secure them to agree to testify to the birth of a child to Minnie at Granny Letcher's. (R. I, 589–594; Digest 29.)

After considerable traveling about, Sadie located Minnie at Fort Lawton, Seattle, Wash., in June, 1914. She went to the home of Minnie, who recognized her. Sadie told her that she was a Government officer, engaged in enrolling, and that she wanted to know about Thomas and Alice who were enrolled as two of Minnie's children in 1895, and for whom she could not account. Minnie told her that Thomas Atkins was her father, who had been dead seventeen years when she drew that money; that she had been hiding from the Government for nineteen years because she had drawn that money. Sadie told her that the land allotted to Thomas was valuable; that she was working for Bartlett as well as the Government, that all Minnie had to do when the Government officers asked if she had the child was to say "yes"; that Bartlett would give her $2,000 for a deed to the land. Minnie asked "who is dead in Leavenworth, that if I say I had a

child that was born in 1885, that I can say I gave it to." Sadie promptly said Granny Letcher, Minnie assented, and procured a piece of paper and marked down the year agreed upon, 1885. Sadie then told her that she had already started this story and had framed it up with some people in Leavenworth. (R. I, 560–561; Digest 26.)

Sadie then related how Minnie's husband was made acquainted with her earlier life and of what was planned (R. I, 563–566; Digest 26); how, through the defection of Betty Mann, who had accompanied her to Seattle, Long, the representative of Page, appeared on the scene and made an offer for a lease; and of the intervention of Capt. McNab and Hanford who took over Minnie's interests. (R. I, 571–575; Digest 28.)

She further stated that she went to see Minnie on the following Sunday when Minnie told her she had signed over her business to McNab, that "they are going to make a white case out of it and they are not going to have any negroes in it at all. * * * they want me to say that I had a baby born in the hospital and I gave him away when he was two years old". (R. I, 578; Digest 28.)

Sadie and Betty returned east with Bartlett, and Sadie, seeking to continue her employment with Bartlett, and leading him to believe that Tommy might still be alive, induced him to allow her to proceed with a search for him to the end that if found a deed might be secured from him. (R. I, 586; Digest 28.)

She then saw Dennis and asked him if he could secure a man with nerve enough to sign this deed as Thomas Atkins, suggesting, that if so, they could switch him to the Gypsy Oil Co. rather than to Bartlett. (R. I, 599.) Sadie then made a trip to the Pacific coast, but after awhile Bartlett became convinced that she was duping him and let her go.

About the middle of August Betty Mann told Sadie that one Cook, a government officer, was going to arrest her because she had been passing herself as a government officer. She went to her attorney, C. S. Walker, and told him of this, asking him to go with her to see Page, so that she might tell Page "there ain't no Tommy Atkins," and that she was going to get out of his way because "he is working with Fred Cook making a dead man." She told Walker also of what Minnie had told her of Thomas Atkins being her father. Walker told her to go to Page herself and that he would wait in his office until her return. (R. I, 615; Digest 30.)

Sadie went to Long's office, adjacent to Page's, because she knew Long, told him what she had come for, and Long said Page wanted to see her. She went with Long to Page's office; Long introduced her to Page, who said he had been looking for her. Sadie said, "Mr. Page, I came up here to tell you there is no Tommy Atkins." Page replied, "I don't give a damn if there ain't, the Government record says so and we will make one." Told Sadie he

wanted the birth and death of Thomas Atkins established in Leavenworth and asked her if she could do it; she said yes. Page then said he had been informed by friends in Leavenworth that Dennis Jones was a shrewd man, had been on the police force, and a detective, was a lawyer and a politician, and that his influence in the case would help it—could Sadie get it? She told him that Dennis Jones and Rube Smith were her "coworkers," but that she feared she would have difficulty in getting Jones as he had been working with the Gypsy Oil Co. trying to make a live Tommy, and would be disinclined to turn around and make out a dead one. Page told her to tell Jones he would get arrested if he didn't stop trying to make a live man. Page directed her to meet him that evening at the Sand Springs Park—an amusement enterprise of Page's. (R. I, 616–617; Digest 30.)

At Long's suggestion Sadie then went to Mr. Rice's office on the next floor (Rice, of Rice & Lyons, attorneys for Page) and gave him the names of some who could be used as witnesses, Long telling Rice that Sadie was now working for them. (R. I, 618; Digest 30.)

Returning to Walker's office she reported to him that she had told Page, and had a job to get some witnesses. He said that she, Page, Long, and Josey were headed for the penitentiary. Sadie promised to inform him of the result of the meeting at the park. (R. I, 619; Digest 31.)

Sadie then relates the incidents connected with the meeting with Page and Long that evening, when Page agreed to give her $1,000 to establish the birth and death of Thomas Atkins in Leavenworth, and told her to come to his office for a contract the next morning. Sadie asked Page how he was to reconcile the new evidence with Minnie's Sapulpa testimony, wherein she swore that she had the child at the Sisters Hospital. Page said he would make Minnie "go back on the stand and say the reason she told that lie she didn't want her husband to know she lived with negroes." (R. I, 620–621; Digest 31.) The next day a contract between the Gem Oil Co. and Sadie was executed, whereby it was provided that Sadie should receive a check for $1,000 (check for that amount being deposited with the contract in a bank) when witnesses furnished by her had testified "in land suit wherein Minnie Folk, née Atkins, is seeking possession of allotment * * * of her son, Thomas Atkins," and when Page and Josey were in legal possession under their lease, declared valid; if they were not declared legal owners under the oil and gas lease then the check to be returned to the company. (Govt. Ex. 42, R. VI, 4902; R. I, 621–622; Digest 31.)

Long arranged to meet Sadie in Leavenworth the next day, and then asked her to meet Hanford, who was in his office. Sadie demurred because she had had an unpleasant experience with Hanford at Seattle, but was induced to talk to him. She twitted him on the result of Minnie's testimony at Sapulpa,

and then asked him if he understood that she was going to make a negro case out of it. He asked in reply if she thought she could make it, and told her that he had taken Minnie to Leavenworth and that she didn't know anybody and didn't know where to take him. (R. I, 624–625; Digest 31.)

Sadie told Walker of the contract and he secured a copy of it at the bank. (R. I, 626; Digest 32.)

Went to Leavenworth, told Dennis Jones of her employment by the Gem Oil Co., and that they desired him to work. He agreed and then Sadie brought him and Long together, but Dennis insisted (as Sadie had previously advised) on seeing Page, so a trip to Tulsa was arranged, which resulted in Jones's employment. (R. I, 631–632, 636; Digest 32.)

His contract is reproduced as Govt. Ex. A-83 (R. VI, 4782–83.) It is dated September 23, 1914, and under its terms Dennis was to receive $10 per day and expenses of $5 per day, and if the Gem Oil Co. was successful in its suit in the Creek County court, and if satisfactory evidence was produced by Dennis of the death of Thomas Atkins, he was to receive an additional $500. There was a stipulation that any information obtained by Dennis was to be confidential and not disclosed without consent of the Gem.

Thereafter Sadie, fearing prosecution by the Federal authorities because of having represented herself as a government agent, made a confession of her part in the transaction and received immunity.

Sadie is corroborated by Betty Mann as to the former's employment by Bartlett and the conversation

with Dennis Jones wherein it was agreed to evolve a "frame up" (R. II, 1058–59; Digest 35); as to the agreement with Long whereby Betty was to communicate with him if Minnie was located (R. II, 1063; Digest 36), Long admits this (R. V, 3500–01; Digest 155). Betty testified to a conversation with Minnie at Seattle when the latter was located wherein Minnie stated that the Thomas Atkins on the roll was not hers and must belong to her brother or sister (R. II, 1065; Digest 37), and that she had drawn money she was not entitled to, that she was afraid of the Government, and that was the reason she had not written or gone back to see her children in Oklahoma. (R. II, 1096, Digest 39.)

Harry Folk, Minnie's husband, testified for the Minnie Atkins interests but was not asked by them regarding Sadie's conversation with him in which she told him that Minnie was to assert that she had a child Thomas. (R. V, 4163; Digest 215.)

The testimony of Mrs. Kirk is proof that Sadie was thought to be a friend of Minnie, and disproves the assertion made by defendants that Minnie complained to McNab and Hanford that she was being annoyed by Sadie. (R. V, 3691; Digest 165.) Minnie asked Sadie to have her taken to Mrs. Kirk and agreed to meet Sadie there. Mrs. Kirk testified that she expected Minnie to visit her in July, and that Sadie did call at her house looking for Minnie; related how she accompanied Sadie and Bartlett to Seattle to see Minnie and how Hanford abused her and would not

let Minnie talk to her. (R. II, 1129–33; Digest 42.) Also that of Mrs. McComb who stated that Minnie told her of this land matter and she understood from her that Sadie had brought her good news concerning it. (R. V, 3858; Digest 183.)

But the most striking corroboration of Sadie's story is the testimony of her attorney, C. S. Walker. He states that Sadie told him of her conversation with Page and that she was to be employed to secure witnesses to testify to the existence of Thomas Atkins, although Page knew that there wasn't a Thomas Atkins because she had told him. (R. II, 1283–90; Digest 49.)

We can not, in the space of this brief, undertake to refer to the many bits of evidence supporting Sadie's testimony. What has been set forth already is, in our judgment, amply sufficient. The Minnie Atkins interests of course assail Sadie and her testimony. Whatever her past, they knew it when they employed her, and can not now be heard to attack her reputation or character.

Further, on the question of fabrication of a case, the story told by Mrs. A. G. Wilds is very illuminating. She was employed by Betty Mann and one Kohler, a detective, to endeavor to gain access to Minnie's home and to listen to what she said. She went to Minnie's for the first time July 26, 1916, made herself agreeable to Minnie and they became very friendly. She tells that Minnie talked very frankly to her, told her that Page had made her swear to lies; how Long

had wanted her to claim the "nigger kid." (R. III, 2099–2100; Digest 85.)

Mrs. Wilds also gives corroboration to the story of Sadie James, for she states that Minnie said that Sadie found her, and she, Minnie, gave her a good many facts about herself but that she could have given her a great deal more. (R. III, 2101; Digest 86.)

Mrs. Wilds later wrote the Secretary of the Interior about the matter for the reason that she felt a fraud was being perpetrated. (Govt. Ex. A–101, R. VI, 4813.)

Again, it is significant as showing that Sadie's story of the "frame-up" is true, that Hanford testified that he never heard of Granny Letcher until after Sadie had been employed by Page. (R. V, 3799–3800; Digest 178.)

The confession of Minnie given in December, 1914, to Montgomery is a further proof of the claim that the case of the defendant Page is a fabrication. That confession was given without any compulsion; McNab and Hanford were present, Hanford obstructing as much as he dared. Montgomery told Minnie that he wanted only the truth. McNab advised Minnie to sign it if it was the truth. (Montgomery's testimony, R. II, 1371–75; Digest 56; Hanford's, R. V, 3717–22; Digest 172; R. V, 3818–19; Digest 180; McNab's, R. V, 4130–34, 4152; Digest 101, 104.)

This confession was left by Montgomery with McNab to be held by him until immunity was secured by the former for Minnie and if not secured was to be destroyed (R. II, 1373). This action by Montgomery in thus trusting the confession to McNab shows his fairness in the whole transaction. The attitude of McNab and Hanford is in strong contrast. The very next day Hanford went to Minnie and induced her to retract the statement, communicated with McNab, who, without consent of Montgomery, returned the confession to Minnie. McNab's justification of his conduct is of itself a sufficient commentary on his attitude. (R. V, 4137; Digest 102.) And even Hanford on cross-examination reluctantly admitted that this confession would have accounted for all the discrepancies in Minnie's testimony and for all the suspicions raised in his mind since the suit of the Government had been instituted. (R. V, 3820; Digest 180.)

Witnesses for the Page interests testified to seeing Thomas Atkins at Granny Letcher's for varying periods from 1885 to about 1898.

The federal census for 1890 (Govt. Ex. A–98, R. VI, 4813) for the household of Granny Letcher shows William Phillips (Jim Mayo), Samuel Smith, Walter Banks, and Fannie Cavell there, the two latter as "roomers," Walter being listed as 12 years of age.

Roy Reynolds, clerk in the Census Bureau at Washington, testified that he had examined the census returns for Leavenworth for 1890 and found

no name Thomas Atkins or Tommy Atkins, appearing therein. He identified the schedule of Molly Letcher's household as one of the schedules which he examined and stated that in making up those schedules the practice in 1890 was to list all persons residing in a dwelling, children as well as adults, whether members of the family or not. (R. III, 1708–11; Digest 70.)

If, as claimed, Tommy Atkins was born in 1885, he would have been 5 years of age at the time of this census, and if, as alleged, he lived with Granny Letcher all his life, it is indeed strange that his name does not appear on the schedule.

A brief reference to the testimony of a few of the witnesses for the Page interests will give a hint of the character of much of the evidence with which they sought to support their case.

Mrs. Cobb testified positively to the birth of Thomas Atkins to Minnie at Granny Letcher's on the last day of May or the first day of June, 1885. (R. IV, 3164; Digest 132.) Yet she could not recall the year of the birth of her own first child. (R. IV, 3204; Digest 133.) She also testified that just previous to the birth of her second child, April 20, 1885, Minnie, herself then in a pregnant condition, waited on her for four days but that Minnie was unable to do very much work because of her condition. (R. IV, 3164–65; Digest 132.) Yet the fact is that Minnie was able to work all during the next month—May—at Grodevants, and

no one around there knew or suspected her condition. But this woman's evidence is totally discredited by testimony given by T. W. Bell, who testified that she told him at his office in Leavenworth, while depositions were being taken in this case, that Page had gone over her testimony with her and had told her that he wanted her to testify to the birth of this child at Granny Letcher's and to nothing else, and he (Page) would make her comfortable for life. Further, that later at Kansas City she told Bell that she would be willing to testify for him but must first see the big man with the money. (R. VI, 4433–34; Digest 259.) This evidence of Bell is corroborated by Martin, who was present during a part of the time the conversation took place (R. VI, 4442–43; Digest 260), and Blakeney testified that Mrs. Cobb told him in substance that she knew about this boy Thomas Atkins; that he had a birth-mark; and that he was taken to the country by Henry Carter. These three witnesses were identified with the Henry Carter interests, and Mrs. Cobb was plainly out for the highest bidder.

Another instance is the testimony of Doctor Carpenter, the physician who attended Minnie at the birth of Robert Lee Peterkin in July, 1886, at Mrs. Wood's. This witness testified that he made a digital examination of Minnie while she was in the first stage of labor and could testify that she had previously had a child, because he remembered encountering in that examination notches or scar tissues, an indication of a previous childbirth. This

testimony was given 30 years after the birth, without any record to refresh his recollection. Truly a marvelous memory—more so when it is remembered that Minnie was not a regular patient of his! What is also remarkable is that he took this method of ascertaining the fact instead of the usual, common-sense way of *asking* the patient. (R. IV, 2997–99; Digest 124.)

The purpose of this evidence was to refute the Government's contention that Robert Lee Peterkin was Minnie's first child. Yet this witness admitted on cross-examination that he had previously told Mr. Allen, a representative of the Creek Nation, that he thought the child was a first child, and also that he had stated to another person that he couldn't without his records tell whether it was or not. (R. IV, 3014–15; Digest 125.) The correspondence between Mr. Allen and Dr. Carpenter and the latter and Mrs. Anderson are interesting sidelights upon the doctor's attitude. (Govt. Ex. 4–14, R. VI, 4852–58.)

It is of importance to note that Minnie never mentioned the birth of Robert Lee Peterkin, in the Kansas City statement or Tulsa deposition, nor until the receivership hearings in March, 1915, although the Page interests knew of this since Hanford had learned of it in August, 1914, from Peterkin in Boston. (R. V, 3799; Digest 178.) The reason seems obvious, since it necessitated a limited period within which Tommy's birth must be established, and that period

was materially narrowed by the production by the Government of the Grodevant expense account. The desire of Hanford that Peterkin conceal from others the information he had, which would disclose the birth of Robert Lee Peterkin, is of interest in this connection. (See his letter of November 23, 1914, to Peterkin, Govt. Ex. A–84, R. VI, 4783.)

Another significant matter is that although Sam Nash and Walter Banks, who resided at Granny Letcher's at the time Tommy was alleged to have been born there and while he lived there, had been used as witnesses previously, they were not produced at the trial of this case. These two, certainly, if any witnesses could, might be relied upon to sustain the case of the Page interests. Yet no explanation of their failure to testify is possible other than that they had a change of heart after Sadie James made her confession, or else the Page interests did not dare risk using them.

No person who lived at Granny Letcher's during any of the time Tommy was alleged to be there was produced as a witness by the Page interests. The Government, on the other hand, adduced the testimony of many who had lived at Granny's and none knew of Tommy being there: Hudson, R. III, 1747, Digest 72; Thomas, R. III, 1762, Digest 73; Reed, R. III, 1839, Digest 74; La Vallay, R. III, 1859, Digest 75; Paire, R. III, 1885, Digest 76; Lower, R. III, 1906, Digest 77; Carter, R. III, 1924, Digest, 77; Dale, R. III, 1931, Digest 78; Brown,

R. III, 1997, Digest 80; Tutt, R. III, 2031, Digest 81; Flint R. III, 2075, Digest 84.

We wish to call the court's attention to the fact that considerable of the Government's evidence was of documents and records, the verity of which can not be contested. They were all made long before any question of Thomas Atkins's enrollment arose; some of these are the petition to the Leavenworth city council to abate the nuisance maintained by Lily White at 217 Seneca Street; the federal census records of 1890 showing the inmates of Granny Letcher's house; the Grodevant expense account; the post card sent by Hyde to the Carlisle School reporting the arrival of Minnie at Leavenworth in 1884; the baptismal and burial records relating to Robert Lee Peterkin; and the hospital record showing when Minnie was at the Sisters Hospital.

The treatment accorded Minnie herself is a reproach to the Page interests. It will be recalled that when the lease by McNab, as trustee for Minnie, was executed to the Gem Oil Co., Hanford received the stipulated condition of $10,000 in the form of two checks of $5,000 each. He cashed one, retaining $3,000 for "services and expenses" and gave the remaining $2,000 to McNab. The second check was made payable July 30, 1914, for the reason that Page wanted to be satisfied of Minnie's identity before she was paid. (R. V, 3877; Digest 185.) Apparently, the first $5,000 to Hanford and McNab had no strings on it. Now, Long and Hanford went to Seattle im-

mediately upon the execution of the lease, procured a statement from Minnie, and no question seemed to remain as to her identity; she testified at Sapulpa, gave her Kansas City statement, but still the money was withheld. When testimony was being taken in Leavenworth and the Page interests were endeavoring to establish that Thomas was a negro, Minnie became so upset that her testimony could not be taken. She went to a hospital and it was then that payment was made to her, and she consented to give her deposition at Tulsa. (R. V, 3779; Digest 176.)

It is plain that the purpose was to withhold the money from Minnie until she testified as Page wanted and she was paid only when she was so disgusted with the proceedings that it was feared she would desert them. The attitude of Page is evidenced by the communication of Rice, his attorney, to Hanford, setting forth why the second draft was not paid. (R. V, 3746; Digest 174.)

The Nancy Atkins claim.

Nancy's claim is that she is the mother of Thomas Atkins, who was born to her at Wagoner, Okla., about 1889 or 1890. The Government proved by three witnesses who were present that the child was a girl and was born dead—one said it died the same day. (Elnora Mayshack, R. III, 2163, Digest 89; Eliza Sterling, R. III, 2179, Digest 90; Angeline Moody, R. III, 2190, Digest 91. Henry Anderson saw it being buried, R. III, 2195–97; Digest 91.)

A number of witnesses were produced who testified to statements made to them by Nancy that she had had a child born dead. (Dora Smith, R. III, 2209–10, Digest 92; Henry Kidd, R. III, 2220–21, Digest 93; Lula Smith, R. III, 2224, Digest 93; Martha Hardridge, R. III, R. 2233–34, Digest 93; Patsy Jenkins, R. III, 2235–36, Digest 94.)

Micco Harjo, the legal guardian of Nancy, testified that Nancy first told him that the child was a girl, but after she was approached by one Hammett, who wanted a lease upon the Thomas Atkins allotment, she declared it was a boy. (R. III, 2167–71; Digest 90.)

Nancy gave testimony February 9, 1914, in the case of *Nancy Atkins, an incompetent, et al.* v. *H. U. Bartlett et al.*, in the District Court of Creek County, Okla. Then she stated that she had had but one child born to her, a girl born dead, at Wagoner, Okla.; that she never had a child around with her at Wagoner. (R. III, 2162–63, Digest 88.)

On behalf of Nancy, testimony was offered to show that a child, she declared to be her boy, named Tommy, often accompanied her around Wagoner; but the Government produced witnesses who lived in Wagoner and remembered no such boy accompanying her; nor did they know of any other than a Thomas Atkins, the son of Dick Atkins, who was in town frequently with his father.

See the testimony of the witnesses just referred to, and also: Sarah Coats, R. III, 2241–43, Digest 94;

Anderson Childers, R. VI, 4291–93, Digest 220; T. Howard Morton, R. VI, 4299–4300, Digest 105; Jim Childers, R. VI, 4301–06, Digest 105.

The several conflicting statements of Nancy are as follows:

In a deposition given in the office of attorneys McDougal & Lytle in Sapulpa, she stated that she had a girl child born to her at Wagoner, Okla.; that this was her only child and it was born dead (R. IV, 2785); that she so told Harjo, Hammett, and Robinson, who wanted her to swear that the child was a boy; that was the first time she had ever heard of Thomas Atkins. (R. IV, 2787; Digest 247.) Harjo was then endeavoring to lease the Thomas Atkins allotment. (R. IV, 2790; Digest 248.) At this deposition she was examined by her own attorney and denied that she had told Mr. White, who was negotiating for a lease, that Thomas Atkins was her child and lived to be 10 or 12 years old. (R. IV, 2792.)

Nancy was put on the stand at Sapulpa and there, to the surprise of counsel calling her as a witness, testified that she gave birth to a child "supposed to be a boy," who lived to be 10 years old. She was then cross-examined and admitted swearing as she did in the deposition at McDougal & Lytle's, explaining it by saying she had been told by Harjo there was "big money in it" for her and that Harjo had induced her to deny the child being a boy (R. IV, 2775–77; Digest 247); that she had been told that she would go to the penitentiary if she didn't

change her testimony (R. IV, 2780; Digest 247); and that Betty Mann had told her she would get "big money" if she denied the child (R. IV, 2782; Digest 247).

In her testimony at the trial in the case at bar she sticks to the story that the child was a boy and died in 1900, and reiterates that she was promised money to deny the child, now fixing the sum she was to receive at $2,000, and was threatened with the penitentiary (R. IV, 2698–2702; Digest 241); she admits that after the deposition at McDougal & Lytle's office, and before testifying at Sapulpa, she made a statement at Coffeyville, Kans., similar to that given at Sapulpa in McDougal & Lytle's office (R. IV, 2707; Digest 242).

It is apparent that Nancy's testimony that Thomas Atkins was her son is worthy of no credence and her interest in maintaining that arose when she saw a chance to make some money. From her own statement her change of testimony appears to be due to the fact that she didn't get the money promised her for her first testimony. (R. IV, 2708; Digest 241). Her first statements, made long before the Thomas Atkins allotment was thought to be valuable, to her associates at Wagoner, were given under no compulsion but freely and voluntarily.

We believe it was well established that as against the Government Nancy's claim was without merit.

Error is assigned by Nancy Atkins to the ruling of the District Court rejecting proferred evidence to the

effect that it was the general reputation in Wagoner that the child, said to be Thomas Atkins, seen with Nancy was her son. (R. III, 2444; assignment VII, R. VI, 5021.)

This ruling seems amply supported by the precedents in the federal courts. *Blackburn* v. *Crawfords*, 3 Wall. 175, 187; *Fulkerson* v. *Holmes*, 117 U. S. 389, 397; *Flora* v. *Anderson*, 75 Fed. 217, 233, 234; *Northern Pac. Ry. Co.* v. *King*, 181 Fed. 913, 914.

In any event, we do not think the evidence if admitted would have changed the result.

CONCLUSION.

The judgment in No. 253 should be reversed and a decree for the United States ordered.

The judgment in No. 254 should be affirmed.

JAMES M. BECK,
Solicitor General.
WILLIAM D. RITER,
Assistant Attorney General.
H. L. UNDERWOOD,
Attorney.

OCTOBER, 1922.

○

INDEX.

NAMES OF WITNESSES.

For the Government:

	Page.
Allen, Mary Katherine	20
Anderson, Chas	110
Anderson, Henry	91
Angel, W. H	12
Atkins, Minnie	53
Atkins, Nancy	88
Bahler, M	75
Banks, Walter	45
Batterton, Edward L	22
Baugh, Robert L	13, 88
Beechler, John T	65
Beeler, Mrs. Helen	69
Bierly, James F	70
Bixby, Tams	13
Bradford, Elizabeth	74
Brewster, Stuart	95
Brown, Larry	10
Brown, Nettie	80
Brown, Samuel W	7
Callahan, Joseph H	70
Carter, Julia T	77
Chicken	11
Childers, Jim	105
Clinton, George	11
Coats, Sarah	94
Collins, Mary A	68
Collins, Patrick	68
Cranston, Joseph A	72
Cranston, Wm. A	40
Cunningham, Mary N	69
Dale, George	78
Dassler, C. S. W	61
Dawes, Wm. E	68
Donovan, Irwin	6
Dotter, George	59
Eckert, Joe A	67
Feth, Wm. P	60
Flint, Georgia	84
Fritsche, Edward Charles	46
Funk, Edward C	11

For the Government—Continued.	Page.
Gatewood, Emma	79
German, W. P. Z	59
Giacomini, O	40
Greenslade, Rush	48
Gregory, Noah G	10
Grodevant, Frank J	17
Hamilton, Claudius A	15
Hamilton, Mary Spain	15
Hanford, E. C	51
Hardridge, Martha	93
Harjo, Micco	89
Hesse, John C	20
Hodge, D. N	12
Hopkins, Leban Gardner	62
Hudson, Charlie	72
Humphrey, Thomas	13
Hyde, Mrs. Laura J	14
Isam, Fannie	79
Jackson, Mrs. Margaret	69
Jackson, William	67
James, Sadie	23
Jenkins, Patsy	94
Jensen, Mary	23
Jones, Dennis	42
Jones, Martha	41
Kelley, Bernard S	21
Kennedy, J. C	3, 12
Ketcheson, John C	81
Kidd, Henry	93
Kirk, Clara	41
Krew, Wm. W	61
Land, Mirian	22
La Vallay, Elizabeth	75
Lower, Mary	77
MacNab, Alex J	95
McKenzie, Tom M	82
Malone, J. A	62
Mann, Sarah E	35
Mary Gertrude, Sister	21
Mathews, Elmo D	21
Mayshack, Elnora	89
Metchan, Fred	61
Merrick, Edward	4
Miller, Martha	81
Moats, Dr. C. M	83
Montgomery, Frank L	54
Moody, Angeline	91
Morton, Margaret	17
Morton, T. Howard	105

For the Government—Continued.	Page.
Mozee, Thomas Augustus	106
Nash, Mrs. Mary	83
Nash, Sam	43
Nichols, Richard	107
Nirdlinger, Eli	71
O'Connell, J. J	21
O'Connor, James	22
O'Day, Mrs. Alice	66
Paire, Alice	76
Peterkin, Charles	18
Phillips, John	78
Purcell, John M	68
Reed, Belle	74
Reynolds, Roy	70
Robertson, Alice M	14
Rohr, John	59
Rosser, Malcolm E	52
Schott, A. L	21
Sechler, Harry H	61
Shaughnessy, W. B	64
Smith, Dora	92
Smith, Lula	93
Smith, R. J	43
Stafford, Cornelia G	20
Stafford, Major John	20
Sterling, Eliza	90
Thomas, Laura	73
Tutt, Mattie	81
Van Duzee, Mrs. Ada A	106
Vinson, Irene	41
Walker, C. S	49
White, J. B	39
Wilds, Mrs. A. G	85
Willer, Patsy	92
Williams, Katherine	71
Williams, W. I	50
Winfield, Richard J	80
Young, Lewis	69
Rebuttal:	
Allen, R. C	275
Atkins, Ananias	278
Bell, T. W	258
Blakeney, Benjamin B	261
Cook, Fred S	265
Dillman, Elizabeth	262

Erratum.

Pages 95-110 should precede testimony "relative

Rebuttal—Continued. Page.
Elliott, D. G. 273
Endres, Ernest 276
Ewing, Dr. Finis W 263
Fite, F. B 279
Germna, W. P. Z 274
Harrison, Charles 267
Hunt, Floyd 277
Johnson, Sid 280
Kersten, Frank 262
Larkin, R. O 276
Malcolm, C. B 271
Martin, R. E 260
Montgomery, Frank L 269
Rogers, C. H 272
Ruble, J. W 280
Wadsworth, Mitchell 273
Warren, Charles R 264
Warren, W. D 277
White, John H 268
Wilson, Mary 278
For Minnie Atkins:
Adams, Alva 134
Allen, James M 131
Atchison, David 114
Atkins, Minnie 209
Bell, L. B 115
Carpenter, C. R 124
Childers, Anderson 220
Cobb, Mattie 132
Collins, Cornelia Hyde 113
Couch, John 151
Cowling, W. J 131
Crilly, Elof A 135
Crilly, George 136
Curtis, E. O 216
Delaney, Patrick 130
Doidge, Wm. A 222
Folk, Harry B 215
Folk, Minnie 189
Ford, Alexander 119
Ford, Wm. D 120
Foreman, Grant 183
Gempel, W. P 128
Hanford, Edward C 164
Harris, M. A 128
Heis, Frank 130
Higgins, Thomas 134

For Minnie Atkins—Continued.	Page.
Hodge, D. N.	12
Hopkins, A. W.	127
Hunt, Eugenola	183
Johnson, A. L.	122
Jones, Dennis	140
Josey, R. A.	163
Kazey, Lizzie	128
Kinney, George	215
Kirkbride, Thomas E.	163
Lange, Adolph	127
Lipscomb, C.	222
Long, F. B.	152
McComb, Mrs. Catherine S.	182
McComick, Mrs. Ina M.	118
McNab, Capt. Alex. J.	180
Mann, Bettie	151
Page, Charles	184
Riley, Mrs. Lucinda R.	116
Ripley, Emily	110
Roderick, John F.	121
Sheehan, Mrs. John D.	114
Smith, Mary A.	218
Stanton, Mike	217
Swoboda, Theresa	133
Taylor, F. K.	222
Trent, Cheney	217
Tucher, Philip	117
Webster, Milton	126
Welch, Mrs. John	116
For Nancy Atkins:	
Allen, R. C.	248
Anderson, J. H.	249
Atkins, Nancy	241, 247
Bailey, Charles	224
Beard, John T.	227
Best, D. W.	233
Birney, Richard	226
Brady, Foil M.	230
Brewer, Thomas	231
Childers, Ellis	236
Davis, Augustus A.	251
Davis, R. F.	224
Delozier, Bob	234
Dyer, J. L.	229
Engles, Frank	232

	Page.
For Nancy Atkins—Continued.	
Ford, John	228
Jackson, Andrew	228
Long, James E	225
McClaren, J. K	248
McElroy, W. A	232
McHenry, Samuel	235
Miller, Lizzie M	250
Newberry, J. E	224
Phillipi, M. J	250
Posey, Walter	231
Preston, J. M	233
Skrimpsher, Jasper N	229
Smith, W. C	234
Sullivan, M. I	228
Turnbo, Kirk	230
Wasson, A. Grant	228
Way, T. J	234
White, J. B	245. 251
Williams, Nolan	226
Williford, George	231
Yarboro, Blanche	244
For Henry Carter:	
Bell, T. W	252
Carter, Henry Thomas	253
Turner, C. W	258

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, *Appellant*, *v.* MINNIE ATKINS *et al.* } No.

NANCY ATKINS, H. A. RIDGWAY, Guardian of Nancy Atkins *et al.*, *Appellants*, *v.* THE UNITED STATES OF AMERICA, MINNIE Folk, *nee* Atkins, *et al.* } No.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

APPENDIX TO BRIEF FOR THE UNITED STATES.

DIGEST OF EVIDENCE.

RELATIVE TO DAWES COMMISSION.

The testimony of former Commissioner Bixby, E. Hastain, P. B. Hopkins, John G. Leiber was as to the practice of the Dawes Commission in enrolling Creek citizens. These enrollments had not progressed as rapidly as was hoped; many Creeks were

reluctant to accept allotments. When the act of March 1, 1901, the original Creek agreement, was under consideration on the question of ratification by the Creek council, the Dawes Commission opened a temporary office at Okmulgee, where council was in session, to carry on a drive for enrollments. On the last few days before the treaty was ratified on May 25, 1901, about 500 names were enrolled per day.

Prior thereto the practice of the commission had been to require personal appearance of the person desiring enrollment, if adults, or if minor or incapable of enrolling himself, some member of his family.

Special efforts were made by commission to get members of the tribe and heads of families to appear before it, and the rule requiring personal appearance was lifted a few days before May 25, 1901, the ratification of the first Creek agreement. The reason for this change was the opinion held by some that those who were not enrolled when agreement was ratified would be cut off from enrollment.

The commission, during those last few days, adopted this plan: They took the 1890 and 1895 rolls and put upon cards the names of those who had not been enrolled; they did not require the personal appearance of the enrollee or any member of his family; in so far as they could, they secured information about these names from some chief of the warriors, town king, or member of the tribe; possibly they took the town roll to the town king and enrolled all names upon the tribal roll unless he had information that they were not entitled to

enrollment, in which case they did not put their names on the card—otherwise they did.

The Thomas Atkins enrollment card, Govt. Ex A, was made up from 1895 tribal pay roll. Evidently no information was received from the 1890 roll concerning Thomas Atkins, because there would have been a notation on card to that effect, and further because age is given as ten years, and 1890 roll would not have contained name if he was ten years old in 1895.

One important point to which inquiry was directed was to ascertain whether the person to be enrolled was living on April 1, 1899.

There was a card called a completed card and one called an uncompleted card; no card was completed until they were satisfied that enrollee was alive on April 1, 1899; had age and sex, parentage and everything that decided whether he should be enrolled.

The incomplete card required further investigation. (R. 182–213, 237–253, 253–265, 266–280.)

J. C. KENNEDY:

Formerly chief clerk of land office division in office of Superintendent of Five Civilized Tribes; that included the enrollment division; in 1912 the practice was not to put on certified copies of census cards pencil notations appearing on the originals; in 1914 practice was changed so that pencil notations appearing on originals were put on copies; he had something to do in making order for that change. (R. 4465–66.)

Cross-examination:

Pencil notation was put on a card when matter was pending and undisposed of; when final action taken, notation thereof in ink was made on card. (R. 4466.)

EDWARD MERRICK:

Law clerk in office of Supt. Five Civilized Tribes; connected with Indian Service at Muskogee since 1901. In April, 1901, started work in Creek enrollment division; remembers Creek Council meeting at Okmulgee to consider ratification of original Creek agreement, act of March 1, 1901; went to Okmulgee shortly after May 1st; Commissioner Bixby, Hopkins, Beaver, Leiber, Hastain, and witness worked on enrollment Creek citizens; council had been in session more than two weeks before treaty ratified on May 25, 1901; went over to Okmulgee in endeavor to ascertain whether names on rolls unaccounted for were entitled to enrollment in order to complete Creek enrollment. These unaccounted names referred to were names on tribal rolls for which no application for enrollment had been made. Had 1890 and 1895 tribal rolls, approximately 1,500 or 2,000 names unaccounted for.

Witness states he made original census card of Thomas Atkins on May 23, 1901; has made investigation and is unable to find any record in office prior to May 23, 1901, relating to that record other than the tribal roll; there was no old census card made by field parties; name Thomas Atkins was one

of the unaccounted for names; every name on 1895 roll which was unaccounted for there at Okmulgee was listed on a card—this because it was thought by some that unless names were enrolled before ratification they could not be enrolled; for that reason Commissioner Bixby decided that every unaccounted for name, whether any person appeared on behalf of that person or not, should be listed on a card; accordingly, a great many cards were made during the last 3 or 4 days that contained only the name and tribal enrollment. A great many of the unaccounted for ones were completed over there because town kings and warriors and other persons there gave them other information. It was the intention to list for enrollment either on a completed card or uncompleted card the name of every unaccounted for citizen appearing on the tribal rolls, and that was done.

No independent recollection as to information received relative Thomas Atkins; the tribal roll was the basis of placing these names on roll unless commission was advised that persons represented thereby had died prior to April 1, 1899; the name was listed because it appeared on the tribal roll; about 500 to 600 names per day were listed for enrollment in the last three days before treaty was ratified. There was never a time when there were so many names listed as in those three days except prior to March 4, 1907, when they had another rush by reason of the act of 1906 closing the roll on March 4, 1907. (R. 3451–57.)

Cross-examination:

Made reference to authentic tribal roll whenever there was one; 1895 *pay* roll contained more information than authentic roll; the council acted upon the authentic roll; pay roll copied from that; the only information in reference to Thomas Atkins that was procured from either 1895 pay roll or the 1895 authenticated roll was notation under tribal enrollment (R. 3467). Other information on card must have been secured from what some one told him or member of commission, if not procured from Minnie Atkins' census card (R. 3468); information relative age, degree of blood and parentage must have come from some other source beside the 1895 rolls (R. 3469). After enrollment completed, in all cases where cards uncompleted, investigation was made by field parties; when town kings or prominent Creek citizens would come into office, they would be asked about different persons (R. 3469–70). The cards that the field parties took out were cards not completed as to descriptive data, parentage, and age; that wouldn't include the Atkins card; doesn't think anything ever done with Atkins card for several years after May, 1901 (R. 3475).

IRWIN DONOVAN:

Was a law clerk in the Creek enrollment division of the Dawes Commission from September, 1904, to January, 1905; testifies as to practice obtaining when letters issued to withhold patent in any allotment case. In case such as Thomas Atkins, the letter

directing withholding patent would be prepared in enrollment division, directed to Creek land office, and notation thereof with reason for action or reference to letter would be on the census card. (R. 4451–52.)

Government offers in evidence "hold up" record; certified copy of letter written and entries made on Dawes Commission records relating to holding up of patents on Thomas Atkins' allotment; offer rejected. (R. 4452–53.)

There is received in evidence defendant's Exhibit B–14, certified copy of census card of Thomas Atkins. (R. 4948–54.)

Also received in evidence Commissioner Needle's letter of May 9, 1905, to E. B. Miller, directing withholding of patents on Atkins' allotment (R. 4453.) Govt. A–23. (R. 4664.)

SAMUEL W. BROWN:

Creek citizen of Euchee Band; town king of Euchee; was such in 1895; there was a payment made to members of Creek Tribe in 1890 and in 1895; was clerk at convention which made up 1890 roll of Euchee Town; in 1890 Minnie Atkins was out of the Territory, Nancy was in Territory; some time at Muskogee, and also at Wagoner, which are in eastern part of Creek Nation; witness was living on Snake Creek, in western part of Creek Nation; convention held on square grounds on Snake Creek, purpose of it to take census to make up roll for payments; recalls name of Minnie or Mammie Atkins and that of Nancy Atkins being called up there; their names were

placed upon 1890 roll; one of the neighbors of Thomas Holden, brother-in-law of Minnie, said that Holden knew something about Minnie having children. Thomas Holden stated that Minnie had two children, but he didn't know their names; witness said it wouldn't do to leave them out if they are not in the country and it would be better to enroll them, and if council will not accept they would have to cancel them; didn't know names of children; the words Thomas and Mary were not written above the words two children there at that convention; council ratified the roll but the words Thomas and Mary were not thereon then; doesn't know when those words got on 1890 roll.

Was town king of Euchee in 1895; held a meeting to consider census for 1895 roll; after that meeting witness had to gather names of rest of the people and put them on the census.

Minnie, Nancy, and Jim Atkins names were placed on 1895 roll by witness, who was given those names by John Davis, Minnie's uncle; took the list Davis gave him and put it down in a little memorandum book (Govt. Ex. A–32, R. 4707); Davis gave him names of Ed Schrimsher, Minnie Atkins, Charlie, Susan, Thomas, Nancy and Mary.

Didn't have much conversation with Davis that day—just asked him if he knew the remnants of the Atkins family and he said he did and gave witness the list; didn't say anything about the kinship existing between these different ones and witness did not question him.

Didn't know the children in the list, knew Ed, Minnie, and Nancy; put these names given by Davis on 1895 roll; this after convention; roll was not thereafter taken up in convention.

Roll was taken to Creek Council, which ratified it; at time of ratification committee of council was appointed to consider census rolls of each town; committee asked town king and warriors about rolls; doesn't know that Atkins family and their names on it were discussed before the committee because "we never had much trouble with our rolls—always tried to get it right and we stated that is all we could get up and they accepted it."

Committee reported to council and council, if it found the rolls correct, approved them.

Recalls payment made to Minnie—she received for four—witness collected money due Schrimsher and Nancy Atkins.

Knew personally all the old members of Euchee Town, but didn't know some of the young ones; didn't know any Euchee named Thomas Atkins except Minnie's father; never knew or saw a boy named Thomas Atkins who claimed to be Minnie's child;

Clerks of Dawes Commission at Okmulgee when Creek agreement was ratified asked him about unaccounted-for members of Euchee Town; doesn't recall giving any information about Thomas Atkins.

When Minnie drew money she didn't say those she drew for were her children, witness assumed that they were. (R. 214–222.)

Govt. Ex. A–32 (R. 4707) received in evidence; being page 76 of memorandum book of Sam W. Brown, in which he listed names of Minnie Atkins and others. (R. 4558.)

NOAH G. GREGORY:

Creek Citizen, Euchee Town; was town king of Euchee in 1890, recalls conversation in connection with making 1890 roll for Euchee Town; was in Okmulgee in May, 1901, just before ratification of original Creek agreement; called there by Dawes Commission to help enroll names and to correct the rolls he had; went over Euchee roll with Hopkins; remembers name of Minnie Atkins on 1895 roll; when they came to her name witness said that the last he had heard of her she was in Colorado, didn't know whether she was living, had tried to find out but hadn't been able to locate her; knew Minnie had two children living with Holden; didn't know Minnie personally then; Nancy was not present at Okmulgee during enrollment period in May, 1901; Holden was not there or any member of Minnie's immediate family; never knew any member of Euchee Town named Thomas Atkins. (R. 232–237.)

LARRY BROWN:

Euchee Tribe Indian; in 1901 was a warrior of Euchee Town (an officer); other officers in 1901—Chicken Dixon and George Clinton—perhaps Sam Brown. Dawes Commission had an office in Okmulgee at time of council meeting called to ratify Creek agreement; didn't know Minnie Atkins; never knew

of her; nor of Nancy; doesn't mean to say Minnie never lived there nor Tommie, doesn't know much about Euchees in Sam Brown's neighborhood. (R. 1712–13.)

CHICKEN:

Member Euchee Band of Creek Indians; was officer (warrior) of Euchee Town in 1901; talked with members or clerks of Dawes Commission at Okmulgee relative members of his town and their enrollment in May, 1901, at time of Council meeting which was considering ratification of Creek agreement; he told Dawes Commission Sam Brown made up the roll; doesn't recall if they (clerks) asked about particular persons who were members of his town; doesn't know Minnie, Nancy or Lee Atkins; he didn't put any name on roll; lives in Polecat division of Euchee Town. (R. 1714–16.)

GEORGE CLINTON:

Substantially same as that of *Chicken*, except says no one of Dawes Commission talked with him or any one else (warriors) from Euchee; doesn't know Minnie, Nancy, Lee Atkins. (R. 1716–20.)

The following introduced by Minnie Atkins relative to the Dawes Commission:

EDWARD C. FUNK:

Clerk in office of Superintendent Five Civilized Tribes; identifies card given him as Creek census card of Thomas Atkins; put notation on card "E. B. Miller, chief clerk land office, letter of May 9,

101983—22——2

1905, from Commissioner to the Five Civilized Tribes directing action to be suspended the matter of issuing deed to heirs of No. 1"; put top notation there about two years ago; that is "E. B. Miller, chief clerk"; doesn't know who put the other notation. According to practice the other part of the notation quoted must have been put on card soon after May 9, 1905 (the receipt of letter); practice for awhile was to certify cards without pencil notations, then that was changed so as to have all notations on copy. (R. 3653–57.)

J. C. KENNEDY:

Clerk in office Superintendent Five Civilized Tribes; doesn't recognize handwriting of notation on Thomas Atkins census card relative letter of May 9, 1905, etc. (R. 3658–59.)

W. H. ANGEL:

Identifies Government Ex. A–3, certified copy of pages of letterpress copy book (letter), transmitting Creek roll for approval by Secretary of the Interior. (R. 3660.)

D. N. HODGE:

Creek Indian; was a member of house of kings at one time and of house of warriors at another; was present at the making up of 1895 roll; when lists of towns were brought in they were referred to a committee and the council acted upon the committee's report; kings and warriors in council exercised very great care in fixing up the roll; Dawes Commission consulted people about making up its roll—consulted kings and warriors. (R. 3663–65.)

THOMAS HUMPHREY:

Shown defendant's Ex. B–25 (R. 4958), certified copy of Thomas Atkins' census card, made April 2, 1912; copy contains every notation that was on card when witness certified to it (R. 4458–59).

Cross-examination:

Did not himself make certified copy, merely certified it upon O. K. of some other employe; usual practice was to put in ink on certified copies notations appearing in pencil on original; remembers case called to his attention by Mr. German where certified copy did not have the lead pencil notations which appeared on the original, and that thereupon order was issued to thereafter put on copy not only typewritten and ink work on card, but also lead-pencil notations appearing on the original. (R. 4459–60.)

ROBERT L. BAUGH:

Worked in the land office of Dawes Commission October 19, 1913; shown census card and states that notation in pencil thereon is in his handwriting; must have put notation on between October, 1913, and 1915, when he quit; thinks Kennedy told him to put notation on card. (R. 4553–54.)

TAMS BIXBY:

While he was at Okmulgee enrolling Creek citizens, the Creek attorney was there; he frequently appeared before commission and had an opportunity to appear whenever he desired, representing the Creek Nation. (R. 4645.)

Cross-examination:

Tribal attorney and committeemen were in and out of the office now and then, and when they desired to take up cases with witness they did so; couldn't say that they examined every enrollment case, every card; Creek attorney did not stay with witness and go over these cards. (R. 4647.)

GOVERNMENT'S EVIDENCE RELATIVE TO CLAIM OF MINNIE ATKINS.

ALICE M. ROBERTSON:

Neighbor to Minnie's father and mother; knew Minnie; taught her at mission school and at Carlisle in 1881, 1882; saw her in 1895 at Muskogee; Minnie had two children, by Peterkin; next saw her at Fort Lawton, Wash., in July, 1914, where witness went at instigation of Gypsy Oil Co. to identify her as same Minnie; was not allowed to talk to her about Thomas because of objection by Mr. Hanford, attorney. (R. 290–300.)

Records at Carlisle Indian School show Minnie admitted there January 2, 1881, and left July 8, 1884. (Several short periods between those dates she was farmed out for a few months to different persons. Records there show Minnie 15 years old. (R. 328–340.)

Mrs. LAURA J. HYDE:

Minnie came to them as servant in July, 1884; estimated her to be about 18 to 20. Had no men associates that Mrs. Hyde knew of. No indications of pregnancy; never suspected Minnie of anything of the kind; always thought Minnie a virtuous girl;

never before this case came up did she hear of Minnie's association with negroes. Worked for Mrs. Hyde about 2 or 3 or 4 or 5 months; Minnie left suddenly, possibly on account of a soldier; heard of Minnie having children; heard she was an unnatural mother, did not love the child, never heard of her leaving child with negroes to be cared for. (R. 341–347.)

CLAUDIUS A. HAMILTON:

Knew Minnie when she was working for Hyde in 1884; Minnie came to see his wife, who told witness Minnie was a Carlisle girl. Minnie went from Hyde's to Fort Leavenworth. Witness saw her frequently when she was working at Fort; Minnie would come to his house. Noticed Minnie in family way when she was working at Fort; told her not to come to his house any more; later came with Peterkin, whom Minnie introduced as her husband; her condition had then passed away. That time only time witness saw Minnie in condition of pregnancy. Also knew Minnie at Fort Logan, Colo.; she was living with Peterkin; had had three children, two boys called the Harrison boys and Mabel Peterkin, latter died when about two years of age. (R. 347–359.)

MARY SPAIN HAMILTON:

Wife of Claudius Hamilton; before her marriage, which occurred in 1883, she was superintendent of laundry at Carlisle School; there became acquainted with Minnie. After her marriage lived in Leavenworth; Minnie called upon her there in 1884. When Minnie was working for Hyde saw her two or three

times. From Hyde's Minnie went to Ft. Leavenworth; saw her often after she went to Fort; about once a month Minnie would come to witness's house. While at Hyde's Minnie showed no signs of pregnancy, nor did she at Carlisle, when witness saw her there. Quite awhile after Minnie went to the Fort witness noticed signs of that condition; it was within two years after she went to the Fort. Her husband quarreled with her about Minnie coming there, and she told Minnie of it and latter stopped coming to her house; after a while, she came with Peterkin, whom Minnie introduced as her husband. Condition had disappeared; saw Minnie quite often after that; once a month, probably more. Saw Minnie later at Ft. Logan, Colo. Witness lived at Ft. Logan six or seven years. Minnie lived at Ft. Logan 3 or 4 years. Peterkin left her and Minnie lived with Harrison, a butcher, at Logan Town, near Fort. Minnie had a baby at Fort by Peterkin—Mabel; it died there; was 8 or 9 months old. Minnie had two boys, the Harrisons, born after Mabel. Witness saw Minnie often after birth of the boys. Minnie told witness she was going away from Logan but didn't say where. Minnie while in Leavenworth showed signs of pregnancy only the one time referred to.

In June, 1914, Sadie James came to see her while she was living in Denver.

Cross-examination:

First saw Minnie in Leavenworth in 1884; she noticed Minnie's condition some time before her

husband did; suspected it before it began to show; didn't say anything to Minnie about it; knew Peterkin for about a year after Minnie first brought him; she then introduced him as her beau, later as her husband, probably the second time. (R. 359–382.)

FRANK J. GRODEVANT:

Lived with brother, Herb Grodevant, at Ft. Leavenworth beginning Feb., 1884, and until Nov., 1887. Knew Minnie; she was employed at brother's house as domestic; saw her every week, probably several times a week. Minnie was employed in 1885; he was there when she came and after she left. Minnie shown by brother's expense records to have been employed Oct., 1884, until Sept. 15, 1885. (Not admitted that records show continuous employment that period.) Minnie did not give birth to child while employed there; nor did she show any signs of pregnancy; never saw anything out of the way in her conduct; later Minnie worked for Stafford, an army officer at Leavenworth; witness saw Minnie at Ft. Logan after she went there in Nov., 1887; when he first saw her at Logan she was wheeling a baby. (R. 388–406.)

MARGARET MORTON:

Living at Ft. Leavenworth in 1884, 1885, 1886; knew Minnie; Minnie worked for Lt. Stafford and Grodevant. Stafford's the last place she worked; left there and rented rooms at witness's mother's house, living then with Peterkin, her husband. Minnie gave birth to a boy there the latter part of July, 1886—July 31—child christened Robert Lee; lived four

or six weeks, perhaps longer; Minnie lived at mother's house a month or two after death of child, then went to Hamilton's; Minnie attended funeral of child; this was about her first time out after the child was born. Child born at 815 or 816 N. 8th St., home of mother of witness; not positive that Minnie went to Hamilton's after leaving mother's house; she was back there several times after she left "our" place; knew Minnie worked in Leavenworth at Hamilton's or elsewhere before leaving for Colorado; thinks she worked for family named Hirshfield. (R. 406–419.)

CHARLES PETERKIN:

Soldier at Ft. Leavenworth in 1885. First saw Minnie in the spring of 1885 at that place; met her in January, 1886; she lived with a soldier by name of Oliver; soon after he became acquainted with her (in 1886) he discovered she was in a family way, about 3 or 4 months along; saw her 5 or 6 times a week from time he first saw her in 1885 until he commenced living with her in 1886; when he first saw her in 1885 her appearance was as a woman not in family way; she retained that appearance up to time he met her January 1, 1886; commenced living with her second day after Oliver's discharge (January, 1886); stayed with Minnie at her room at the Stafford's; continued to live with Minnie until fall of 1889; left her at Leavenworth in fall of 1887; she joined him at Ft. Logan in spring of 1888 (March). From the time he first saw Minnie in 1885 until birth of Mabel Peterkin at Ft. Logan, Minnie had

one child, born at Leavenworth in summer of 1886 (July or August) at home of Mrs. Woods (mother of Margaret Morton); lived less than a month. Never married to Minnie; never talked with Minnie as to who was father of this child born at Woods'. "It was not necessary." Doesn't think Minnie associated with any man other than Oliver from time witness saw her in 1885 until he commenced living with her; not probable that she was pregnant more than the one time during period 1885 to birth of child at Woods'. She did not give birth to any child from time he first knew her in 1885 until birth of Mabel Peterkin at Ft. Logan, other than that born at Mrs. Woods'; the child born at Mrs. Woods' was Minnie's first child. (States this on general experience with women.) Next child born in summer of 1888 (Mabel Peterkin); had two other children after he left Ft. Logan. After leaving Logan, sent Minnie $45.00 to pay her fare to Ft. Clark, Texas; she didn't come to him there; went from Ft. Logan to Clark in fall of 1889. Minnie told him she first worked in Leavenworth for Hyde, then to Grodevant's; Minnie did not associate with negroes any of the time he knew her; she was not a "public character." Minnie lived with one man after witness left her, Burke; Mabel Peterkin is his daughter; Minnie didn't associate with any other man than these three during those years; she was not a drinking woman; discovered Minnie was in family way about the first month after he began living with

her; never heard of Granny Letcher, nor of Minnie visiting or staying at her house nor of Minnie visiting at any negro's house at Leavenworth. (R. 419–440.)

JOHN C. HESSE:

Chief of Division, Adj. Gen's office, Washington, D. C. Produced record of William D. Oliver, showing his discharge at Leavenworth December 18, 1885. (R. 441–442.)

Admitted that Patrick Burke, who Peterkin testified as consorting with Minnie, is dead. Oliver also shown to be dead. (R. 442–443.)

CORNELIA G. STAFFORD:

Wife of Major Stafford. Was at Ft. Leavenworth in 1885; employed Minnie when she went to housekeeping in Sept., 1885; Minnie worked for her until June following (1886) when she discharged her because of her condition, which was very apparent; never knew of her associating with negroes: none at the post. (R. 444–450.) When Minnie first employed her condition good; no appearance of recent illnes, strong and robust.

JOHN STAFFORD (major, retired):

Minnie worked for him from Sept., 1885, for about 6 or 8 months; when employed showed no signs of recent illness; Mrs. Stafford discharged Minnie because of her condition. (R. 450–462.)

MARY KATHERINE ALLEN:

Daughter of Margaret Woods. Was at mother's house in August, 1886; Minnie was there with baby about four days old; baby fully developed; christened

Robert Lee Peterkin; died about two weeks later; when witness first saw baby it was in bed with the mother, who was recovering from illness due to childbirth; child appeared to be a nine-months child. (R. 462–472.)

BERNARD STEPHEN KELLEY (priest):

Identified baptismal records showing baptism of Robert Lee Peterkin on August 15, 1886, son of Charles Peterkin and Mary Atkins, born July 31, 1886. (R. 473–476.)

J. J. O'CONNELL:

Identified record of sale as undertaker of casket to Charles Peterkin Aug. 16, 1886, for Robert Lee Peterkin, age about four weeks; buried Mt. Muncie Cemetery. (R. 476–478.)

A. L. SCHOTT:

Superintendent, sec. and treas. Mt. Muncie Cemetery. Identified and read into record certificate of interment of Robert Lee Peterkin, born July 31, 1886, died Aug. 15, 1886, buried Aug. 16, 1886; parents Charles and Minnie Peterkin. (R. 478–479.)

SISTER MARY GERTRUDE:

Secretary of St. John Hospital, Leavenworth, identified record of hospital for 1886 (Gov't Ex. A–81), showing Minnie there Oct. 7, 1886. (R. 480–482.)

ELMO D. MATHEWS:

Sergeant U. S. Army, Hospital Corps. Identified post hospital record, Ft. Logan, Colo., showing birth of Nancy Peterkin August 4, 1888; parents Charles Peterkin, Co. A, 18th Inf., and Minnie Atkins; no

children by this mother, first. Also record of death of Nancy Peterkin on June 28, 1889, age 10 months, 24 days. (R. 483–486.)

EDWARD L. BATTERTON:

Q. M. Sergeant, Ft. Logan, Colo. Identified post record of interments showing interment of *Mabel* Peterkin June 28, 1889. (R. 487–493.)

MIRIAN LAND:

Knew Minnie at Ft. Logan as Minnie Peterkin; Minnie lived in witness's house winter of Cuban war; Minnie had a child in that house, second child; already had one; there were two boys and a girl; second child born at her house; Charlie was the eldest; believes one of the children died; knew man named Harrison who was good friends with Minnie; knew of no other man who was associating with Minnie before Harrison. (R. 496–499.)

JAMES O'CONNOR:

Retired soldier; was at Ft. Logan; came there March, 1889; was there until April, 1898; knew Minnie about 3 or 4 months after coming to fort; was living with either one of two men, Cunningham or Harrison; knew of her having one child, buried about 4 or 5 months after he came to fort; saw two little tots running around Harrison's butcher shop; presumed they were Minnie's (she lived with Harrison); saw Minnie leaving post; had three children with her; saw Minnie again at Ft. Wayne, Mich.; was living with a man named Rice, a member of the band. (R. 499–506.)

MARY JENSEN:

Knew Minnie, who came to Ft. Logan latter part of 1887 or early 1888; Minnie lived in dugout. Mabel Peterkin born there; died about 1889, about a year old; Minnie had two boys born quite a while after Mabel; was living with Peterkin; heard that she lived later with Harrison, the butcher; the children were Harrison's. (R. 506–509.)

SADIE JAMES:

First met Minnie in July, 1884, at Leavenworth; Minnie came there in 1884 and left about fall of 1887 or spring of 1888; didn't know of her having any children at Leavenworth; next saw Minnie in 1895 in Kansas City, Mo., at old Union Station; she had two children, Harvey and Charlie Harrison, Harvey about 1½ years, other about 3 years old; took Minnie to her house where she stayed until afternoon when she and children left; said she came from Colo. and was going to Indian Territory to draw her money; saw her in 1896; then in June, 1914, at Ft. Lawton, Seattle; knew def. H. U. Bartlett; never knew child or man named Thomas Atkins, related to Minnie; was engaged by H. U. Bartlett to endeavor to find Thomas Atkins when she was at Leavenworth in March, 1914; was engaged by Bartlett through Bettie Mann (Sadie Mann), sometimes known as Bettie Rasberry; Bettie told her there was trouble about deed Harjo and she (Bettie) got for Bartlett and that "we have got to find the Thomas Atkins to make the deed good. I have been working on

the case three years and I don't believe there ever was a Thomas Atkins. "All you (Sadie) got to do is to tell them you know Minnie and that you knew when the child was born" (R. 515). "I, Sadie, said Whoever said that Minnie had a son here by the name of Thomas Atkins." That she (Minnie) had no child here by the name of Thomas Atkins. She (Bettie) said, "I said so, myself." Bettie said she would wire Bartlett and have him in Kansas City to-morrow and for witness to tell him that she knew a child was born; witness suggested they see a negro lawyer, Dennis Jones; she and he had just pulled off a deal; went to Dennis'; going down there witness framed to have Thomas Atkins (R. 516). Saw Jones and explained proposition. "I want a boy started [———] by the name of Thomas Atkins, born in 1885; said, can you do it? He said "I can get lawyers, doctors, and bankers in Leavenworth, Kansas., to swear that hell's an icebox" (R. 517). That was between 2:30 or 3 p. m.; then went with Bettie to a sporting house, where they met Rube Smith, whom Sadie introduced to Bettie as a partner of Jones. Smith was a colored man. Went at 6 p. m. to Jones' office—he and Rube Smith were there (conversation at R. 520); agreed then that they would say baby born at Granny Letcher's house in 1885, Rube Smith to be the father. Dennis Jones suggested about baby born at Letcher's (R. 521). Rube said he would be the father; we said we would get a midwife; Dennis said can't get any colored women, they were all too afraid of getting

arrested; we thought we could get Mary Smith, a white woman, and Rube said he could get her to swear that she saw the baby when it was two days old; talked over doctor and decided to "lay it on Dr. McCormick, because he is dead." Witness said when she got to see Bartlett and got in the job and got this boy worked up "we will switch it over on the Gypsy (Oil Co.) because I don't think this man has got as much money as the Gypsy" (R. 521). Next day met Bettie and Bartlett, and witness told Bartlett she knew Minnie and that she had a child named Thomas Atkins, raised by Granny Letcher, and had last seen him when he was 5 years old; agreed to try to find Thomas for Bartlett; went back to Jones' office, found him and Smith there (R. 523); told them of meeting Bartlett and that all they had to do was to start working; Dennis said we will hunt up a boy of Indian color and bring him to Leavenworth, show him around and get witnesses to swear they remember when he was born. Went to see Bettie Mann at Kansas City; met a boy whom two detectives said was Thomas Atkins (R. 526); witness said he could not be Minnie's because too old; boy introduced to Bartlett; he was taken to Oklahoma to go before Dawes Commission; Bartlett came to see witness at Tulsa and she suggested a hunt for Minnie; he agreed; witness went back to Leavenworth, told Jones, and advised him and Rube to keep talking up about baby; Jones said that he had got the talk started about Tommy Atkins and

this Indian woman, among several that he knew, were all right; later received a written contract with Bartlett employing her to find Minnie, she to receive $1,000 and Bettie same (R. 545); secured picture of Minnie and showed it to Jones and Smith. Tells about forgery of deed to Bartlett (R. 552); details steps of search for Minnie, resulting in finding her at Ft. Lawton, near Seattle, in early days of June, 1914; Minnie recognized her. Sadie told her she was a Government officer hunting people to enroll. Asked Minnie about Thomas Atkins. She said "Thomas Atkins was my father. He had been dead 17 years when she drew that money." Witness asked "Where is Alice?" Minnie replied, "Sadie, don't ask, she has been dead too long and [I] don't want to know." Minnie said she had been hiding from the Government for 19 years account of crime she committed in drawing that money. Witness told she was working for Bartlett; also that Thomas' allotment was very valuable and that all she had to do if questioned by Government officers was to say she had a child Thomas; that Bartlett would give her $2,000 for a deed to the land. Minnie asked, "Who is dead in Leavenworth, that if I say I had a child that was born in 1885, that I can say I gave it to?" Sadie said Granny Letcher. Minnie agreed and procured a piece of paper and marked down the year 1885. Sadie then told Minnie that she had already started this story in Leavenworth (R. 559, 560).

Witness at request of Minnie told her husband (Folk) of Minnie's having children (R. 563); Minnie

told her that Charlie, her son, was Peterkin's and Harvey was Harrison's; later talked over with Minnie in presence of her husband the frame-up about the baby at Granny Letcher's (conversation, R. 566). See R. 568 for understanding that Minnie was to execute deed for land and swear to existence of Thomas Atkins. Bartlett told witness and Bettie if they found Minnie to tell her he would pay $5,000 for the land, and if she knew where the boy was would pay $5,000 for boy. Bettie and witness had planned to buy from Minnie for $2,000 and to beat Bartlett out of $3,000 (R. 569). Sadie relates how she waited next day for arrival of Bartlett and finally upon his nonarrival she began to suspect Bettie and made a trip to the fort to see Minnie; was followed by two men; saw Minnie, who told her a man had been there and left paper to be signed; found Capt. McNab and Mr. Hanford there; Capt. McNab asked witness if she knew Long, Page, and Josey (Long represented Page); said they had wired Supt. Dana Kelsey about Long. Saw paper, read a few lines of it; it said something about Minnie being the mother of Thomas Atkins, born in Leavenworth 1885, died in 1899; told Capt. not to have Minnie sign; told him baby died when 6 months old; Long said that was too early and "we would have to fix it." Minnie was to leave with Long for Spokane; witness told Capt. not to have Minnie sign papers or go with Long; went back to Bettie's and Long came in; he offered witness and Bettie $3,000 to steal Minnie and take her back to

101983—22——3

Oklahoma; witness refused, and stated she was going to keep Minnie there until Bartlett's arrival. (She herself telegraphed for Bartlett.) Bettie said she wired Long because Bartlett offered only $1,000 apiece for finding Minnie; that Long was working for Page, who had lots of money.

Next day returned to Minnie and latter told witness she had signed over business to McNab; that "they" were going to have a white case—no negroes in it; wanted Minnie to say she had baby born in the hospital and that she gave him away when two years old. (R. 578.) Next day, found Minnie's house closed up; was told by neighbor Minnie was at McNab's; went to latter's house, asked for him, was told he was not there; found telegram in Bettie's room that Bartlett was arriving next day; met him, went to McNab's with him; Minnie came in; acknowledged she was Minnie; asked if she was mother of Thomas Atkins; McNab answered "yes, but she hasn't seen him since he was two years old" (R. 581); returned to Denver with Bartlett and Bettie. Had agreed with Minnie that latter would swear to existence of Thomas Atkins; witness to get a picture from Mrs. Hamilton (R. 586); had told Bartlett Thomas Atkins was in Los Angeles, California; went to Hamilton, got picture of friend of Mrs. Hamilton's son; friend worked on railroad; agreed to take Mrs. H. to Los Angeles.

Going back to time of frame-up with Dennis Jones, Sadie relates talks with number of negroes in Leavenworth whom she endeavored to get to agree

to swear remembering Minnie as having child at Granny Letcher's. All declined to do so (R. 589–591); relates (R. 592–593) conversation with Father Shorty, supt. of orphan asylum (was endeavoring to get boy suitable to pass off as Thomas Atkins).

Witness tells of visit to Dennis Jones, where she related the result of her trip and talked over possibility of getting some one to pass as Thomas; agreed that Sadie would try to find some one in West for that purpose, and if Dennis Jones found some one better for the purpose to wire her; next day they received letter from Bartlett with deed for Thomas to sign and expense money to Los Angeles. (R. 595.) Went to Los Angeles, then to 'Frisco, Seattle, and Portland; found Bartlett at Portland; had interview with him and two detectives; detectives took picture obtained from Mrs. Hamilton and later ran down original, a railroad conductor (R. 605); went to Seattle to see Minnie; Minnie avoided her, didn't get to talk to her (R. 607–608); returned to Portland; many detectives on her trail; was offered $2,000 by one to sign papers swearing she had seen baby since it was two years old (R. 609). Returned to Tulsa, Okla., saw Bettie who told her of money received from Page (R. 611); witness went to Gypsy Co., saw Crawley, who asked if she had found anyone yet; he said Dennis Jones told them the boy had gone to Boston; asked witness if she thought the boy was in Boston; she (lying) said yes (R. 611). Had talk with Bartlett, who said he didn't believe there was a Thomas Atkins (R. 612); discharged by Bartlett. Witness later informed she

was to be prosecuted for posing as government agent. Went to her attorney, C. S. Walker, told him of it and asked him to go to Page with her while she told Page there wasn't any Tommy Atkins, and that she was going to get out of his (Page's) way, she thinking that Page was instigating her prosecution. Also told him what Minnie had said to her about Thomas Atkins on 1895 roll being her father. He told Sadie to go to Page by herself. (R. 615.) Went to see him; saw Long, who said he wanted to see her and took her to Page; she told him she had come to tell him there was no Thomas Atkins (R. 617); Page said "I don't give a damn if there ain't; the Government records says so and we will make one."

Told Sadie he wanted the birth and death of Thomas Atkins established in Leavenworth, and asked witness if she could do it; she said yes.

Page then told her he had been informed by friends in Leavenworth that Dennis Jones was a shrewd man, had been on the police force, and a detective, was a lawyer and a politician, and his influence in the case would help it—could Sadie get him. She told him that Jones and Rube Smith were her coworkers, but she feared there might be difficulty in securing Jones as he was working with the Gypsy Co. to establish a live Tommy and would be disinclined to turn around and make out a dead one. Page told her to tell Jones that he would get arrested if he didn't stop trying to make a live one. (R. 617.)

At Long's suggestion, Sadie went to Rice's office on the next floor and gave him the names of some of

those who could be used as witnesses, Long telling Rice that Sadie was now working for them. (R. 618.)

She returned to Walker and reported what had transpired. He said she, Page, Long, and Josey were headed for the penitentiary. (R. 619.)

At Page's direction she met him that evening at Sand Springs, a park near Tulsa owned by Page. Page agreed to give witness $1,000 if she would produce witnesses to swear to the birth and death of Thomas in Leavenworth. She accepted but insisted upon a contract. Asked Page how he would reconcile the new evidence with Minnie's Sapulpa testimony wherein she swore to the birth of Tommy at the Sister's hospital. Page said he would make Minnie "go back on the stand and say the reason she told that lie she didn't want her husband to know she lived with negroes." (R. 620–621.)

Next morning executed contract with Gem Oil Co. whereby she was to be paid $1,000 when witnesses furnished by her had testified and Page and Josey were declared in legal possession under their lease. (Gov't Ex. 42, R. 4902.) R. 622.

After executing contract Sadie, at suggestion of Long, saw Hanford in former's office. She twitted him upon the result of Minnie's testimony at Sapulpa and asked if he understood she was now to make a negro case out of it. He asked her if she thought she could do it and told her he had taken Minnie to Leavenworth and that she didn't know anybody and didn't know where to take him. (R. 624–25).

Sadie then told Walker of execution of contract and he procured a copy of it. (R. 625.)

Went to Leavenworth, arriving August 31st; saw Rube Smith, told him she was working for Gem Oil Co. (Page), agreed that Rube should get $500; talked about securing witnesses; met Long; then to Aunt Kate Logan's; Long came and took statement of Aunt Kate (R. 630). Long met Rube and latter agreed to take $5 per day and expenses and $500 when case finished (R. 631); saw Dennis Jones, who first refused to consider employment as he was working with Gypsy, but upon being threatened (suggested by Sadie) with arrest, agreed to work with Gem. Long saw Dennis and agreed to contract, but Dennis demanded a contract with "boss man" (Page); arrangements made to go to Okla.; returned to Oklahoma and reported to Page. Dennis arrived later and Sadie took him to Page's office; present, Page, Long, Ben Rice, Dennis, and Sadie; Page hired Dennis as Leavenworth representative; contract prepared; Dennis said it was too binding; drew one himself. Page told Dennis "I want the birth and death of Thomas Atkins established in Leavenworth, Kans.; I want him to be born in 1885 and die in the fall of 1898 or spring of 1899 and live long enough just for an allotment." Dennis suggested a man in Boston died when 20 years, named Thomas Atkins, another in North Platte, Neb., living. Page vetoed; wanted dead man; Dennis ought to be able to find a grave (R. 636-637). Sadie made trip to several places endeavoring to find grave, but unsuccessful; recalled

by Page to Tulsa; Page told her he wanted her to handle Minnie and get deed from her, promising Sadie $1,000 for it (R. 643); deed was to be to Creekmore, because Page said it would look too bad to have it in his name (R. 645); after depositions were taken in Leavenworth saw Page, who told her Minnie had broken down and things breaking badly for Gem (R. 646); later saw Minnie in Long's office, peeped in at her. Long said to Page they (Hanford and he) were going to take Minnie to Rice's office to rehearse her for trial; then Page employed Sadie to get hold of Nancy Atkins and secure confession from her relative her baby; went to Nowato, got in touch with Mrs. Yarboro, friend of Nancy's, who agreed to help (R. 648–649); saw Nancy at Mrs. Yarboro's house; Nancy confessed that Bettie Harjo had got her to tell the lie about the baby; that she was told that Minnie was dead and all she need to do was to say her girl was a boy (R. 650); made arrangements for taking Nancy from Nowata (steal her), but Page when told of expense involved abandoned it.

On cross-examination, Sadie tells again about details of frame up (R. 706-707) and why Granny Letcher's was decided upon as place where Minnie would be said to have had Thomas.

Tells of deal whereby forged deed Atkins to Bartlett was procured. (R. 801.)

Never saw Minnie at Granny Letcher's, altho she (Sadie) was there every night or so when witness was working for Brock. (R. 814.)

States man named Bludsoe offered her $5,000 for statement to the effect that witness had been hired to tell a lie on Page. (R. 844.)

Says Page wanted testimony relative Thomas Atkins to have him born in 1885 and die in spring of 1899; changes testimony previously given that death was to be in fall of 1898 or 1899. (R. 872.)

Witness relates interview with Minnie at Seattle at Fort, when Sadie went with Robinson, Buell, and Montgomery to see Minnie. Minnie said, "I am still the mother of Tommy Atkins." Hanford took Minnie into kitchen and Minnie said, "I am still the mother of Tommy Atkins; Capt. McNab has quit; get out, you crooks." (R. 906, 907.)

After making her statement to Gov't agent, Sadie was approached by Ed Egan in January, 1915, who endeavored to get her to swear that Henry Carter was son of Minnie. Offered $5,000. Sadie refused. Egan said he represented Uncle Sam Oil Co. (R. 1026–27.)

Granny Letcher lived on Seneca Street in Leavenworth, between 2nd and 3rd, No. 217; then moved to Seneca between 3rd and 4th. This latter was a few years after she moved to 217. Moved to Seneca St. in fall of 1885; previously lived on Cherokee St.; moved off Fourth and Choctaw about spring of 1880; stayed on Cherokee about a year; moved to Delaware between 7th and Broadway; stayed there 3 or 4 months; moved to 215 Cherokee St. Granny lived on Shawnee St. about 1890 (or 1888 or 1889; R. 1037); died on Seneca St., No. 217.

Minnie worked with Sadie at Dr. Brock's Sept.–Oct., 1885; there about five weeks. (R. 1042.)

SARAH E. MANN (also known as Bettie Mann):

One-eighth Creek Indian. Knew Minnie when little girl; went to school with Minnie at Tallahassee and at Carlisle; Minnie 2 or 3 yrs. older than witness; knows Nancy Atkins; were children together; knew Harvey and Charlie Harrison; saw them when 1895 payment made; they were just small children then; after 1885 didn't see Minnie until 1914 (June) at Ft. Lawton, Wash. (R. 1053–54); first attempted to locate Thomas Atkins or Minnie in July, 1912, for John Hayden; was working for Bartlett; didn't find Minnie or Thomas (R. 1054); saw *Nancy* in Aug., 1912; said she had one child (dead, died when born), and that was all the children she had; told witness Minnie had two children, Harvey and Charlie, and that Minnie had two children dead; thought Minnie was dead (R. 1055–56,); Nancy said she didn't know anything about Thomas; thought he belonged to her brother, Lee Atkins, and a white woman he lived with; witness knows Sadie James; saw her in Leavenworth in March or April, 1914; told her of her search for Thomas and Minnie and Sadie suggested her participation; that she could help, knowing so many in Leavenworth; suggested Dennis Jones and they went to see him; told Jones didn't think there was any Thomas because couldn't get trace of him. Jones said, "If that is what you want, I could get up the evidence; I can

prove that hell is an icebox, and I can use from bankers down to niggers." (R. 1059.) Jones asked when Thomas would have to be born and witness said 1884 or 1885; called up several persons and then suggested better ascertain if Minnie is dead or alive; witness got Bartlett to employ Sadie to help locate Minnie and Thomas (R. 1060); had conversation with Rube Smith; told him she was hunting Minnie and that latter had lived at Hyde's; Rube said he had lived next door to Hyde's about that time, but didn't remember an Indian girl working there (R. 1061); witness and Sadie working together on this matter; they discovered that Minnie was west with the soldiers (R. 1062); witness had conversation with Frank Long, who told her he was working for Page for the Gem Oil Co., and they would pay her more than Bartlett to turn over Minnie to them if she found her (R. 1063); offered $5,000; agreed to turn Minnie over to him for that sum; on evening they left for Seattle had conversation with Long, who told her to send telegrams signed Bill Jones in case she found Minnie; he to reply "Mrs. Bill Jones"; went to Seattle at Bartlett's expense (R. 1064); located Minnie at Ft. (Lawton?) at Seattle; had conversation with her at her home; Minnie told her about her children; witness told her about Harvey and Charlie; Minnie spoke of two that were dead; one died at Leavenworth, other at Ft. Logan; don't recall the names (R. 1065); witness told her there was a boy on the rolls named Thomas

Atkins and she (Minnie) said he is not mine; must belong to my brother or sister; said her father was named Thomas, but he had been dead too long. Witness told Minnie they were hunting Tommy and her, and there was a chance for her to make some money; Minnie said she would be very glad to make some money; told Minnie all she had to do was to keep still and not tell anyone else that Tommy was not hers and she could get some money; that a man would give her money to sign a lease (R. 1066). Minnie said she would do it, but didn't want anyone else to know, especially her husband; witness told her not to say anything of her being there; wired Long, who came to Seattle and went to see Minnie; upon return said Minnie had said she didn't have a Thomas; said he told her not to say that any more; said that is all right, we will have a Thomas before we get through. Sadie said suppose one was born at certain time; Long said Thomas has got to be living in 1900 (forget what year he said); he said the dead one we can't use him (R. 1068). Long went back to see Minnie, but McNab and Hanford wouldn't let anyone see her; saw Hanford next day with Long at the Reno Grande Hotel. Long and Hanford left Seattle the next day (Monday); Long told witness Capt. McNab wouldn't let Minnie sign lease; that they thought there was something big in it and were going to try and hold it up and make some money themselves. Long told her to get lease by any means she could and said he would give her $6,000

to get lease to Gem Oil Co.; said he was taking Hanford, Minnie's atty., and he could handle him; was taking him down there (Okla.) and we will fix this thing all up (R. 1069); left Seattle with Bartlett and Sadie returned to Tulsa; saw Page, who said he was glad she had turned the deal to him, and that he had sent her some wires and was sorry she didn't get them; was out of humor with Hanford and Long the way they had treated her; asked her what she thought, if there was a Tommy; she told him to ask Long. Page said he was responsible for Long's contracts, etc.; got her check for $50 or $100; complimented her on her work; that he wouldn't have got the lease but for her; reference to Thomas Atkins made by Page was first mention of that (R. 1071). When witness said to ask Long, Page said "that doesn't make any difference; it is all right; we will have Tommy fixed up all right" (or something to that effect; R. 1071–72); finally got a settlement from Page (Bartlett had terminated her employment); knew Sadie was employed by Page; witness settled with Page quite a while after Sadie got employed; Page wanted some one to get up proof of Tommy Atkins' birth, and said he had to have some one to do it (reference to Sadie's employment); day before Minnie testified at Sapulpa had a conversation with Page, who wanted her to go out to his house to see Minnie. He seemed to be a little worried about her making a good witness. Betty wouldn't go (R. 1073); identifies receipt executed to Gem Oil Co., Page, and

Josey for $550 cash and warranty deed for residence in Sand Springs, Okla., executed to her by Page; release by her of all claims account securing lease from Minnie and services (R. 1075). This ended her connection with the case.

Cross-examination:

After trial of case *Nancy Atkins* v. *Bartlett*, Nancy said to witness: "Why didn't we let me claim that child and make some money, and we wouldn't have hunted up Minnie; I could have been Tommy's mother just as well and we could have had a lot of money now." (R. 1094.)

Redirect:

At Seattle, Minnie told witness that she drew some money for somebody not entitled to it and she was afraid of the Government, that was the reason she had never written back and had not come back to see her children (R. 1096); witness thinks Minnie told her she drew for her sister; said she had drawn for several (R. 1100). During conversation with Page, after Minnie had been on stand first time, he told her Minnie had been swearing wrongfully and that he wanted evidence of Tommy's birth; witness declined to go. Page said he had nigger woman who would go. During these conversations it was just generally understood that there was no Tommy. (R. 1099.)

J. B. White:

Heard Minnie testify in district court at Sapulpa in July, 1914. Minnie testified she had four children;

first one, Thomas Atkins, born in Sisters Hospital, Leavenworth; had but one in Leavenworth; other three born in Ft. Logan; that she worked for Hyde, then Grodevant, then Lt. Stafford; worked 3 months for Hyde, then went to Grodevant's for year and six months, then to Stafford's for year or over; had to quit on being heavy with child; went to hospital and gave birth to Thomas; refused to give name of the second child, girl, two boys, Harvey and Charlie Harrison; said she left Thomas when about 6 months old, got a woman to take care of him; after she went to Michigan, received letter from this woman saying Thomas was dead; had never seen him since he was 6 months old. (R. 1105–6.) Witness went to Sisters Hospital in Leavenworth to investigate if Minnie had been there and found a Minnie Peterkin had been in the hospital two weeks in the eighties. (R. 1109.)

WILLIAM A. CRANSTON:

With father in livery business at 320–322 Cherokee St., Leavenworth; identifies entry of charge, $2.00, to Long and Gem Oil Co. of rig Sept. 12/14. (Note this corroborates Sadie James as to this transaction in securing rig to go to cemetery. R. 1111.)

O. GIACOMINI:

Proprietor National Hotel, Leavenworth; identifies entry on hotel register; showing F. B. Long registered Aug. 23, 1914, registered from Kokomo, Ind.; also shows register of Mrs. F. E. Mann and daughter, Sapulpa, on Aug. 24/14; also shows Long registered Aug. 21/14 as from Kokomo. Atty. Hanford agrees

that entry is in handwriting of Long. (R. 1113–19.)

MARTHA JONES:

Testifies that Sadie James came to her house drunk one evening in summer or fall about 2 yrs. ago (Aug., 1914); Rube Smith came there to see Sadie, as did a white man. (R. 1122.)

IRENE VINSON:

Knows Sadie James; met her in Leavenworth in Aug. or Sept., 1914; Sadie came to her house; had been drinking; went to Miss Martha's (Jones); on the way met a white man whom Sadie said was her lawyer from Tulsa; he said to Sadie "Well, I will see you later on." (R. 1124–27.)

CLARA KIRK:

Knew Minnie as Minnie Folk at Vancouver; was very good friends with her and corresponded with her. Saw Sadie James and Bartlett in July, 1914; came to her house to find Minnie; asked her to go to Seattle to see Minnie to see if they could have a talk with her; was expecting Minnie to visit her on July 8th; went to Minnie's; visited there all day with Minnie. Minnie went to the post after lunch; Folk came while Minnie was gone and visited with her; Sadie James came out, all three waiting for Minnie to return; finally Folk said he didn't think she was coming back; witness had Minnie's suit case and "as I came back out I got off the car at the station and I seen Minnie break and run towards me and she snatched the suit case out of my hand and I said, 'What does this

mean, Minnie?' and she said, 'I just want to help you.' I got to the house and Hanford was there; Minnie introduced him; he started in abusing witness; told her she had better go back to Portland, where she belonged; witness went out on porch; Minnie followed her; Hanford stamped his foot and called for Minnie to come in there; she (Minnie) ran like a whipped child; never saw Minnie any more." Later that evening saw Hanford at O. R. & N. station. Hanford again abused her because of traveling with negro wench. (R. 1128–34.)

Cross-examination:

While visiting Minnie latter told her she was going to get $5,000 on the 28th or 29th of the month from some land of her father's estate (R. 1139) and that she had a son that would be awful wealthy some day.

For the purpose of showing fabrication the Government introduced the testimony of Dennis Jones, R. J. Smith, Sam Nash, and Walter Banks, given on behalf of Minnie Folk at Leavenworth, October 1914.

DENNIS JONES:

Lawyer, resides in Leavenworth—there for 50 years; knew Granny Letcher; saw Minnie 1884 and 5 at Granny Letcher's; she was in family way when at Granny Letcher's, 217 Seneca Street; gave birth to boy named Thomas Atkins there; saw Minnie at Granny's often, with child; saw child with Minnie about a year or so; Minnie left Leavenworth when child was a couple of years old; couldn't say whether Minnie lived at Granny's all the time; didn't see Minnie after she left until recently; child stayed

with Granny; was there when Granny died in 1900; Granny had boy named Jim there then; she also raised Sam Nash and Walter Banks; witness raised a boy with whom Tommy played; Tommy then about 10, 11, or 12 years old. (R. 1160–66.)

Cross-examination:

First time he saw Minnie was in 1884 at Letcher's; guess Minnie must have been pregnant then; Tommy was 12 or 14 years old when witness last saw him; thinks Tommy went to school in Leavenworth; heard that Tommy died at Chicago (R. 1171-72); last saw him in 1898 or '99; first found out Minnie's name was Atkins after Tommy was born (R. 1174); Tommy was about 2–6 months old when he first saw him.

R. J. SMITH:

Corroborates Dennis Jones as to birth of Tommy at Granny Letcher's at 217 Seneca St. in 1885; except last time he saw boy (R. 1179–86) the latter was about 8 years old.

Cross-examination:

Admits being employed by Long to round up witnesses; talked to Jones about case; talked with witnesses during taking of testimony (R. 1188–90); Tommy might have been born at hospital (R. 1195).

SAM NASH:

In 1884, 85, 86, lived at 217 Seneca St. with his grandmother, Granny Letcher; knew Minnie; she came to house on Seneca St. when he saw her; about

that time she was in family way; gave birth to child Tommy there; Aunt Betsy was midwife; first saw Tommy when he was about 3 days old; Minnie left when Tommy was about 2 years old; she was at Granny's two months or little more after Tommy was born, then went to work and was there off and on for the two years Tommy stayed at Granny's; Tommy was sort of in witness' care; bought some clothes for Tommy when latter was 10 years old; when Tommy was about 11 years old lady came and took him away, saying his mother had sent for him (R. 1339-44); warm weather when she came (*Note:* Walter Banks said it was cool weather); said she was going to Kansas City and then to his mother's in Okla.; never saw Tommy thereafter, nor the woman (R. 1345); this was about two years before Granny's death (that was in 1900); was working for Dr. Brock when Tommy went away; then said was working for Spratley's when Tommy left (R. 1346). Tommy went to school at separate school for negroes; Miss Montgomery was teacher; Walter Banks also went same school. (R. 1348.)

Cross-examination:

Talked matter of his evidence over with Mr. Long; Granny didn't keep a bawdy house; never noticed anything wrong with Minnie's conduct; Dr. McCormick was attending physician at birth of Tommy (R. 1352); Minnie never contributed to Tommy's support so far as witness knows; never tried to locate Minnie; no communication with

her; no man acknowledged Tommy as his son (R. 1353); woman who took Tommy was light mulatto (R. 1354); first talked to Rube Smith about this case (R. 1358); Minnie came to Granny's two or three months before baby was born (R. 1360).

WALTER BANKS:

In 1884–1886 lived at 217 Seneca St. with Granny Letcher, his adopted mother; Granny had a boy named Jim Mayo older than witness; Sam Nash, one-armed boy, and Tommy Atkins lived there; latter's mother called Indian Minnie or Minnie Atkins; was three years older than Tommy; remembers Tommy when a baby; Minnie nursed witness some; Minnie left Tommy at Granny's until he was 10 or 11 years; witness played with him and Sam Nash; Tommy went away with some woman whom witness had never seen before; never saw Tommy after he left, nor Minnie; Tommy left before Spanish-American War. (R. 1318–21.) Witness is a negro.

Cross-examination:

Never heard name of woman or any conversation she had with Granny or anyone else about taking Tommy. Tommy and he went to school together at North Leavenworth school; Tommy went when 6 and continued until he went away—about five years. Miss Mackey was teacher; she was colored; has seen Minnie in last few days, same one he knew (R. 1327–31). Minnie left Tommy when he was between 1 and 2 years old. (R. 1335.)

EDWARD CHARLES FRITSCHE (deposition for defendant, introduced by Government):

Druggist; worked for Adolph Lange in summer of 1885; knew girl called Indian Minnie; waited on her a number of times, and saw her at Letcher's, on lower Seneca St.; saw her there with baby nursing; baby three or four days old when first saw it; she walked streets with a fortune teller; Minnie disappeared a few weeks after baby born; saw child until he was about 6 or 7 years old; named Tommy Atkins; saw him at Ella Abbitt's place (R. 1221–25).

Cross-examination:

Witness admits talking with attorneys in case, and has memo. of names and dates (R. 1227–28); frequented Granny's place as bawdy house (R. 1240); when first saw Minnie she was pregnant about 7 or 8 months gone; she was staying there regularly (R. 1241); had no particular interest in Minnie; went to Granny's several times after Minnie left (R. 1243); first saw Minnie in July or August, 1885; first time he ever heard boy's name was from Skinney Frischman at Ella Abbitt's (R. 1248); now says Minnie didn't show signs of pregnancy when he first saw her (R. 1250).

EDWARD CHARLES FRITSCHE, as witness for Government:

Knew an Indian woman before he went to school; she was about 28 to 30 years old; went to school in 1883; remembers when petition to remove Lillie White from 217 Seneca St. was gotten up, that

was in July, 1885; after her removal Granny Letcher moved in, in 1885; was there when Indian woman had a baby in early fall of 1886; was same woman he had previously seen in 1883; woman was a prostitute in 1883 and same afterward; child he saw in 1886 was a few days old; first heard child's name just before giving deposition—heard it in Mr. Bond's office; Mr. Hanford was there (R. 1256–60); was in a theater and was called out to meet Bond and Hanford (R. 1261); asked him about knowing anyone named Tommy Atkins born 1885 or '86 at Granny's; he made some memo.; from that memo. gave deposition; admitted he was mistaken about some of testimony given; saw child but didn't know it was Tommy (R. 1263). Told Bond he was looking for work and asked a letter to Page (R. 1264); Bond wrote Page; went to Okla. to see Page who told him to stick around and maybe they could find something for him to do; Page suggested that he would put up a stand for him at his park in Tulsa (R. 1265); Page said to stick around if there is anything else we can do for you. Saw Bond while en route to Okla. to testify; Bond started to talk to him and he told him he didn't care to discuss case; Bond said "You haven't got cold feet—they haven't bluffed you, have they?" The child I saw at Ella Abbitt's was too old to be the child he saw at Granny's; erred in so identifying it in deposition (R. 1266). Talked with Dennis Jones about coming to Tulsa; Jones told him about Page having helped others

(R. 1267). When he went to Bond's office, Bond paid him $10 for that day; they gave him $10 per day; says he was convinced he made errors in previous testimony (R. 1268); identifies Minnie as Indian whom he knew in Leavenworth (R. 1271); saw and identified Minnie preceding summer in office of Bond who phoned him to come there; Minnie was there; he recognized her but she did not recognize him; some one else was there [Long?] (R. 1279).

Recalled:

Endeavor made to show that his change of testimony was due to duress but this not done; testified again that the woman he saw with child was the one he had known as a prostitute in Leavenworth in 1883. If she was not in Leavenworth in 1883 she couldn't have been the same woman. (R. 1314.)

RUSH GREENSLADE:

Attorney for Gypsy Oil Co.; his company made search for Thomas Atkins; employed Dennis Jones to assist; contract between Gypsy Oil Co. and Jones (Govt. Ex. A–88, R. 4801) offered in evidence and two letters from Jones to Crawley, V. Pres. of Gypsy Co.; went to Wash'n, D. C., and N. Y. City with Jones in search of Atkins; co. claimed under Bartlett (R. 1215–18). In the contract it was stated that Jones had reason to believe he knew the whereabouts of Atkins (date of contract, Aug. 3, 1914); letters state Jones's conviction that Thomas is alive and will be found. (Govt. Ex. A–89 & A–90, R. 4802–3.)

C. S. WALKER:

Attorney. Sadie James came to him about Bartlett in summer of 1914; told him she had been to Seattle, in employ of Bartlett, with Bettie Mann and had found Minnie; that Betty sold Minnie to Page; after Long got hold of Minnie, Bartlett wouldn't pay them; wanted witness to assist her in collecting her portion due from Bartlett; went with Sadie to Brown's office where contract was; examined it; took up with Bartlett settlement of amount due Sadie; after two weeks Sadie told him she had a deal with Page to establish birth and existence of Thomas Atkins (R. 1283–85); witness had spent considerable time in investigating Atkins case for a client; asked Sadie if she thought there was a Thomas Atkins or that he ever existed and she said *No.* (R. 1286.) Sadie said she was going to get witnesses to prove for Page that Thomas was son of Minnie and the place and time of his birth. Sadie said Page knew character of her mission; she had discussed it with him; she said "of course Mr. Page knows there never has been any such a boy as Thomas Atkins because I told him so." (R. 1286.) Later told him she had a written agreement with Page and Long; saw the contract; went to bank at Sadie's request to read it; identified Gov't Ex. 42 (R. 4902) as contract (R. 1287); Sadie told him Minnie had told her she never had any such a boy as Thomas Atkins (R. 1288); asked him what could be done with her if she went to another State and manufactured testimony;

witness told her she would be put in "pen" (R. 1288–89); three or four weeks later came to his office and told him she had been to Leavenworth and had gotten witnesses by whom she was going to prove the birth and life and existence of Thomas; called the name of two or three; remembers name of negro lawyer, Dennis Jones (R. 1289); later Sadie became uneasy about situation and asked witness what she should do; he advised her to go to Judge Allen's office and confess.

W. I. WILLIAMS:

Attorney. Knows Sadie James; came to see him in early fall of 1914 reference to a contract she had with Gem Oil Co., or Page and Josey; this before her confession to Government; his partner Davidson had handled business for Sadie; on this occasion partner out; she left without stating business; returned in a few days and then on a subsequent call stated she had contract with Gem Oil Co. by which she was to hunt up and produce evidence to show that Minnie had a son named Thomas Atkins; said she had complied with contract and wanted her money; Page had put her off; witness wanted to see contract (R. 1295); went to bank and saw it; identifies Govt. Ex. A 42 as contract (R. 1296); made copy of contract; saw Page for her several days after Sadie went with him; Page said Sadie had rendered capable and efficient service and had complied with contract so far as furnishing witnesses; was willing to pay her but that Josey objected; agreed to pay $250 anyway; finally Sadie got

$250; Sadie later told him Page would pay $750 if she would take it in furniture (R. 1297); Page wanted her to start rooming house in Tulsa. In latter part of November, 1914, Sadie told him she was going to quit working for Page because he wouldn't pay the $750; that she was going to work for Bartlett; said there wasn't any Tommy Atkins; told him Page and Long knew it.

Government attorney reads portion of testimony of E. C. HANFORD, given in receivership hearing March, 1915:

Attorney for Minnie Atkins. At Sapulpa hearing when Minnie testified that the child was born in the Sisters Hospital; made investigation at that hospital on return trip to Seattle with Minnie; found no record of Minnie there in 1884 or '85; Sister Superior told him they did not receive confinement cases; asked to see all records and found record Oct. 7 to 21, 1886, of Minnie Peterkin; saw Peterkin and had conversation with him relative Minnie; after that went to Leavenworth to see some old soldiers that Peterkin had named; found nothing; returned to Tulsa; heard from Long as to name of house and locality in which child born; went to Leavenworth; Long was going there with Sadie James and had arranged to go with Betty Mann; had no confidence in Betty; witness went to Leavenworth with Betty to see if what she said checked with what Long found with Sadie. (R. 1300–01.)

Minnie didn't mention birth of Robert Lee Peterkin in Leavenworth in July, 1886, or at any other time in

her deposition at Rice & Lyons's office at Tulsa; doesn't think Minnie was asked in reference to the Peterkin baby. (R. 1315–16.)

"Subsequently Minnie was brought back to Leavenworth, at which time the depositions were taken; that was in 1914; depositions were in State court case. Minnie didn't testify at that hearing because in hospital; later went to Tulsa." (R. 1316–17.)

That he (Hanford) had a conversation with Minnie the morning after she made the confession to Montgomery; this was before he went to McNab to get Montgomery to bring him to Minnie's house, where she recanted. (R. 141.)

MALCOLM E. ROSSER:

Attorney for Nancy Atkins's interests. Was present in July, 1914, at Sapulpa as such attorney when Minnie Atkins testified to birth of one child in Leavenworth; she made no mention of birth July 30, 1886, or death August, 1886, of Robert Lee Peterkin; was present at taking of depositions in October, 1914, at Leavenworth for use in State court suit when Dennis Jones and Rube Smith, Walter Banks and Sam Nash testified; they are negroes and were called on behalf of Page and Minnie Atkins. (R. 1301–03.)

Government introduces portion of Minnie's testimony at Tulsa.

Went from Carlisle to Leavenworth; worked nearly five months for Hyde; child named Thomas Atkins born to her at Leavenworth at Granny Letcher's; remained in Leavenworth a year after Thomas was born, then went to Ft. Leavenworth, where she worked a year for Grodevant and for Stafford a few months; when Thomas was 1½ years old she left Leavenworth for Ft. Logan, leaving Tommy with Granny; never saw him thereafter; heard when in Detroit he was dead.

Knew after she left Hyde's that she had Tommy and went to Granny's; child born about 2 years after she came to Leavenworth; testified at Sapulpa that she had child in Sisters Hospital because Granny didn't run a very good house and not because she was a negress; while at Grodevants and Staffords went to Granny's all the time. (R. 1304–07.)

Government offered Minnie's previous testimony given at receivership hearing to show that defendants had fabricated a case regarding birth of Thomas Atkins; offer refused by court. See R. 1415–16, for explanation of sequence of testimony.

The *testimony of Minnie Atkins* (Minnie Folk) which was given in deposition in case pending in Creek County, Okla., District Court wherein Minnie et al. were plaintiffs (deposition taken October, 1914, in Rice & Lyon's office in Tulsa); this deposi-

tion taken after the depositions taken at Leavenworth, and in it she stated:

After leaving Carlisle Indian School went to Hyde's at Leavenworth; worked there nearly five months; a child was born to her there named Thomas Atkins at Granny Letcher's; remained Leavenworth about a year after his birth, then went to Army post about 3 miles from Leavenworth; worked at Grodevant's for a year, then at Stafford's for few months; left fort when Tommy about 1½ years old; went to Ft. Logan, Colorado; left Tommy at Granny Letcher's when she left Leavenworth; has never seen him since; heard that he was dead. (R. 1304-06.)

Also testimony of *Page* at receivership hearing.

Learned that Jones, Smith, and others testified that Minnie has given birth to Tommy at Granny Letcher's; Minnie took stand on his behalf and her own at Tulsa and testified to same facts; testified after she stayed at his house for two or three days; had a hard time getting her to tell the truth about certain things. (R. 1317.)

FRANK L. MONTGOMERY:

U. S. Probate Attorney. Acting in minor and restricted Indian matters coming before probate courts in Oklahoma; is under supervision of Secretary of the Interior; knows Sadie James; he signed so-called immunity paper produced by Sadie; knows Minnie; first saw her in Dec., 1914, at Ft. Lawton, Seattle, Wash.; talked with her there; Harry Folk and Capt. McNab present; dis-

cussed matter of legality of allotment to Thomas Atkins (R. 1369); Minnie claimed she was mother of Thomas. Hanford was present one day (Wed.); (he interviewed Minnie several days); Minnie said she was nervous and tired and would take up matter Friday. Saw McNab Thursday; Hanford came in and Minnie later; prior to this, witness had gone over with McNab and Minnie all the information he had upon the Atkins controversy. Witness already had information that Minnie had a child named Alice, but was unaware of where she was born; also knew of Charlie and Harvey Harrison; had no information as to Robert Lee Peterkin (R. 1370). On this Thursday morning discussed conveyance made by Minnie of royalty interest and possible fee in allotment to Page; pressed Minnie for truth relative Thomas Atkins' enrollment; Hanford warned Minnie witness was Government officer and that any statement would be used against her (R. 1371); practically same statement made to her by McNab; question of immunity for Minnie was discussed (in case she made confession). Minnie deliberated for some time and then stated she was not the mother of Thomas Atkins; that the Thomas Atkins for whom she drew the "grass money" was her father; that she had three children, Alice Peterkin and the two Harrison boys, Charlie and Harvey; no one questioned her until she finished; further discussion had between all present as to immunity; all discussed the matter of her testimony at Sapulpa in July previous of having

had the child born at Sisters Hospital and also her testimony taken in Oct., 1914, at Tulsa; read from that testimony and from confession of Sadie James (R. 1372); then witness suggested that this confession be reduced to writing and left with McNab; that if he succeeded in obtaining immunity for Minnie, McNab was to deliver confession to him, otherwise to burn it; that was agreed to; confession was prepared by witness in McNab's private office, and when completed Minnie was told by McNab that she didn't have to sign unless she wanted to and that it would be taken against her; but now was the time to tell the truth; Hanford also warned her as her attorney. Minnie after some deliberation signed the statement; witness delivered it to McNab and never got it back (R. 1373), has never seen it since (R. 1374); en route on train from Seattle to Denver, about 3 or 4 days after signing of statement, witness reduced to writing substance of that statement for his private files; substantially the statement was (R. 1374–75):

> Dated Ft. Lawton, Dec. 17; I, Minnie Folk, nee Atkins, in the presence of C. E. Hanford and Frank L. Montgomery, United States probate attorney, do hereby state that no child was ever born to me by the name of Thomas Atkins, or Tommy Atkins, and that the Thomas Atkins for which I drew the grass money was my father; that I am the mother of only 3 children, Mabel or Alice Peterkin, Charlie Harrison, and Harvey Harrison.

In addition to what appears in confession, Minnie stated to witness that Sadie James made the sug-

gestion to her that she had a child named Thomas Atkins. No one during these days of conversation there at Ft. Lawton had mentioned the name of Robert Lee Peterkin; after confession signed witness had lunch with Minnie and her husband at their house; Minnie prepared lunch and was agreeable, pleasant, and hospitable (R. 1375–76); went with Minnie to National Bank of Commerce to secure amount ($5,000) paid to Minnie by Page for lease, this money to be Minnie's regardless of whether title was good or bad (R. 1376); this was done at witness's suggestion, he fearing that Page interests hearing of confession might undertake to tie up this fund in Tulsa by legal proceedings; Minnie signed at bank some paper required by bank whereby she could draw the money from the Tusla bank. (R. 1377.) Wired Commissioner Sells of confession of Minnie and recommended effort be made to secure immunity for Minnie; succeeded in getting immunity. (R. 1378.)

Cross-examination:

First had attention directed to case by Mr. Mott, who told him of information which could be furnished by Sadie James; went to Kansas City and saw Sadie; Mr. Buell cooperated with him in matter. (R. 1380–81.) At interview with Minnie at Ft. Lawton, witness read to her testimony of witnesses taken in case; Minnie was incensed and resented the attempt made to "their" trying to make the father of child a negro (R. 1387); next day after confession was signed witness went to McNab's quarters; Han-

ford came in and requested them to go to see Minnie; witness went but not McNab (R. 1395–96); when they saw Minnie she repudiated the confession (R. 1397); said she had made the statement to please witness; that he had been very persistent and she had wanted to get rid of him; that she had been subjected to strenuous ordeals for months in regard to birth and existence of Thomas Atkins; that the statement was untrue; that she *was* the mother of Thomas Atkins and that the written statement had been signed purely under those circumstances; said she would rather not have any property rights in the land than be harassed so much. Witness said to her that she had made him a lot of trouble but if she was telling the truth now he hoped she would get the land and hoped to assist her in getting it. (R. 1397.)

Redirect:

Guarded against being influenced by Bartlett and Buell (R. 1401); secured authority from Washington to make Seattle trip (R. 1402). When he interviewed Minnie and was reading to her the depositions taken at Leavenworth, Minnie said no one could get her to say that she was not the mother of Thomas Atkins. She also stated that she was subjected to the influence of Page through Frank Long at the time that she was at Leavenworth, and that she knew none of the parties there except Mr. Crilly, the liveryman, and that while she knew him, much of what she testified to was not true. (Probably read to her the depositions of Rube Smith, Sam Nash, and Walter Banks.) Minnie stated that she had been

framed by Long and others to say that Tommy was born at Letcher's and not at the hospital, and was emphatic that no one could get her to say that Tommy was never born to her (R. 1403); no perceptible difference in demeanor of Minnie on day of confession than other days when witness saw her. After confession Minnie expressed satisfaction that the thing was over and a hope to secure the money from Okla. before any legal proceedings could be started to withhold it (R. 1405). Either witness or Hanford suggested withdrawal of money and both concurred in that being desired. When Hanford came into McNab's quarters the day after confession signed, he told witness he had been to see Minnie (R. 1406); thinks Hanford stated that Minnie had retracted (R. 1407).

W. P. Z. GERMAN:

Testified that on receivership hearing Government introduced evidence showing that Minnie gave birth to Robert Lee Peterkin at Mrs. Woods in Leavenworth on July 31, 1886, before Minnie testified or her affidavit was filed. (R. 1412–13.)

GEORGE DOTTER:

Lived at 217 Seneca St., Leavenworth; was born there; left there July 28, 1884, when his father sold the place, was 14 at the time. (R. 1417–22.)

JOHN ROHR:

In 1883, 84, 85, 86 was clerk of district court at Leavenworth; had been at Lily White's place—a house of prostitution; first time May 16, 1885; place was on

Seneca St. between 2nd and 3rd on south side of street, adjoined Seth's place (R. 1422–25); went once after that, same place, between June 1 and Sept. 30, 1885; was within about 3 or 4 months after first time. Reason why he can not more definitely fix second date is because he gave to Malone in that year several checks, one dated July 14, another May 28, and third Aug. 18 (Malone lived with Lily White; R. 1429). Witness loaned money to Malone and went to Lily White's to collect (R. 1430); thinks it was the $500 check he went to collect (that is dated Aug. 18/85. R. 1432).

On cross-examination is asked regarding testimony given in a deposition previously in this case which varied from that now given in respect to date of second visit to White's (R. 1432–36); states he was in error and now desired to stand by last given testimony (R. 1436).

WILLIAM P. FETH:

Architect. Parents lived at 223 Seneca St. (south side); house not now standing, nor is 217 Seneca St.; lumber yard there now; made drawing of that Seneca St. as it existed (approximately) in 1884–5–6; drawn from memory; drawing identified as Govt. Ex. A–91; locates various streets and places from plat (R. 1438–40); also made plat of location of fort prison and some residences (including Grodevant's) at Army post at Leavenworth (R. 1440), Govt. Ex. A–79 (R. 4779); was 15 yrs. old in 1885; was living then at 223 Seneca St.; witness was author of petition to

remove Lily, petition dated July 5, 1885; drew it up at request of his mother and father (R. 1441); does not remember a family named Letcher living at 217 Seneca St.; identifies Govt. Ex. 59 (R. 4912), petition for removal of Lily White from 217 Seneca St. and Stella Forrest from 303 Seneca St. (R. 1447–48).

FRED METCHAN:

City clerk of Leavenworth; has custody of city records; identifies minutes of city council Aug. 5, 1885, relative petition for abatement bawdy house of Lily White and action thereon, which was reference to city marshal with instructions to abate the nuisance. (R. 1450–53.)

HARRY H. SECHLER:

Identifies father's signature on petition. (R. 1456.)

WILLIAM W. KREW:

Works for Abernathy Furniture Co.; employed by that company since 1884; knows property 217 Seneca St.; factory just across the street from there and a little east; knew Lily White by sight; she lived at 217 Seneca; she was white woman; doesn't know Granny Letcher; remembers name, though; doesn't remember colored family living at 217 Seneca; remembers Sam Nash; thinks he lived on Kickapoo St.; Lily was there in 1884. (R. 1457–59.)

C. S. W. DASSLER:

Attorney at law; had an interest in property known as 217 Seneca St.; Dotter resided there; they sold to Emma Serrill; witness purchased some of the notes given by Serrill in payment; notes were secured

by mortgage; purchased first batch of notes Oct. 27/85, another batch Oct. 29/85, and another Nov. 7/85; fixes dates by checks given to pay for them (R. 1462–64); filed suit to foreclose mortgage Oct. 30/85; Lily White made party defendant because occupant of premises (R. 1465); suit dismissed Nov. 27/85; witness collected rent from tenants after he acquired title on Nov. 24/85; Mrs. Letcher was first tenant from whom he collected; the first money collected was on Nov. 28/85 from Letcher and others; Letcher stopped paying rent about April, 1890, and then commenced again in Sept., 1894; continued then until her death. (R. 1467–69).

Cross-examination:

Says stated dates from his books; no independent recollection; doesn't know of own knowledge who was occupying premises when suit filed. (R. 1470.)

LeBan Gardner Hopkins:

Attorney at law; lived in Leavenworth since April, 1868; he and Dassler acquired 217 Seneca St. in Nov., 1885. (R. 1477–80.)

J. A. Malone:

Lived in Leavenworth until 1889; was policeman in Leavenworth and deputy sheriff; knew Lily White; she ran a sporting house on Seneca between 2d and 3d, south side of st.; when he first met her witness was on police force; was at her house one night, stayed about an hour and a half talking with Lily; that the only time he was there; no colored people there that he saw (R. 1483). Lily after lived on Choctaw St. close

to 4th St.; she went from Leavenworth to Kansas City, Mo., then to Tacoma, Wash.; saw her in Tacoma; Lily died in June, 1894. Knew Ella Abbott in Leavenworth in 1890, at brick house on Choctaw St. (R. 1485), same kind of house; in 1894 Ella was at cor. 3d and Cherokee Sts. conducting sporting house, continued there in 1894 and '95; never saw any boy there by name of Thomas Atkins or Indian Tommy; never heard Ella mention him; Ella had not conducted sporting house in Leavenworth previous to 1889 (R. 1487); identifies letter received by him from Ella in May, 1916 (Govt. Ex. 57, R. 4911); this letter askes interview with Malone and refers to Hanford as one of "our lawyers" (for oil co.) and to the other outfit as a "negro oil co. fighting us"; asks that Malone give no deposition and not to talk to this oil co. until she talks with him; Hanford was to see him about six weeks before this deposition; in conversation with Hanford related substantially what he has now testified. (R. 1488–89.)

Cross-examination:

Robinson, the detective, was to see him (R. 1490); Lily was next to the Feth house on Seneca St.; colored people lived in house after Lily; Ella Abbott was referred to as his girl (R. 1497); knew all the girls who were there; tells how he happened to see nigger child there at Ella Abbott's; doesn't recall what child was called; has no idea what Ella refers to in letter rec'd by him (R. 1501); came to give deposition with Robinson, who explained what Govt. wanted to prove (no Tommy Atkins); Robinson told

him he represented Buell; Govt. subpœnaed him; Robinson told him Buell paying his (witness also) expenses from Tacoma to Leavenworth for deposition (R. 1502–03). Rec'd letter from Ella after Hanford had been to see him (R. 1507).

Redirect:

Letter also from Gem Oil Co.; destroyed that letter (R. 1508), this letter was before Robinson had been to see him. Saw colored child referred to at Ella's when she was at 3d and Cherokee in 1895; Ella had colored woman as help; child was in kitchen where colored cook was (R. 1509). Prior to 1889 Ella did not run sporting house in Leavenworth; had wide acquaintance in performance of official duties with houses of ill repute in Leavenworth, never heard of Minnie Atkins or Indian Minnie, or Indian boy or Tommy Atkins in these houses (R. 1510).

Cross-examination:

Never heard of Minnie Atkins or Indian Minnie; knew Granny Letcher but can't recall when (R. 1511); didn't know of Ella running bawdy house in 1889; didn't know her until 1890; if she did prior to that time he didn't know it (R. 1513).

W. B. SHAUGHNESSY:

Chief of police, Leavenworth. Produced roll call book of police dept. for years 1872 to 1886; shows name of Joseph Malone under date June, 1885, as special policeman; began service 25th; agreed between counsel that record shows Malone on roll June 24, 1885, as special; continued as such until

Sept. 1, 1885, when he went on as assistant guard. In Dec., 1885, Jan., Feb., Mch., April–Aug., 1886; Sept., 1886, north beat, night; Oct., north beat, day; Nov., middle beat, night; Dec., 1886, south beat, night; continued as regular policeman until April 11, 1887. (R. 1514–17.)

JOHN T. BEECHLER:

Lived in Leavenworth in the '70's and '80's and '90's; knew Indian by name of Indian *Mary;* first knew her in 1875 in north part of town, north of Shawnee and east of 5th (R. 1518); saw her in the '80's on 2d St. in 1883; she used to buy wood from Apperson; she was a chorister in North Leavenworth; was about 5 ft. 4 in., yellow complexion, was Spanish or Indian, not white; dressed in flashy colors; never knew of her having a baby; witness knew a fortune teller in Leavenworth in the '80's; her place of business was on 2d St. between Delaware and Cherokee; fortune teller also lived on Seneca between 2d and 3d on north side of street (R. 1519); does not know whether Indian Mary was around with her; last time saw Indian Mary was about a year or so after 1883 (R. 1520); knew Lily White in early '80's; lived on Seneca St. on south side old Dotter property in first house east of Feth's (vacant lot between); Emma Moss lived in same house with Lily; all white folks; Lily conducted sporting house; Mrs. Letcher succeeded Lily in the house. (R. 1521.)

MRS. ALICE O'DAY:

Was in dressmaking and hair dressing business in Leavenworth at 208 or 210 Shawnee St. between 2d and 3d on north side in the middle of the block; also had business at 610 S. 5th St. before the Shawnee St. store; Shawnee St. store across the alley from 217 Seneca St., maybe a little east (R. 1535); Shawnee St. business established in spring of 1885; became acquainted with Lily White when she (witness) moved to Shawnee St.; Lily ran house of ill fame; acquainted in business way; did dressmaking and hair dressing for some of inmates of Lily's place (R. 1536); Lily's place almost opposite witness's back gate across alley; remembers petition gotten up to dispossess Lily, about middle of summer, 1885; lived with mother who ran boarding house on Shawnee near 2d St. (R. 1537-38); witness ran her establishment for about two years; made dresses, etc., for Lily's "girls"; did a great deal of hairdressing for those girls; witness was married at this time, had two children, one born this place January 15, 1887, died Feb. 14, 1887; moved from there in Oct., 1887; Granny Letcher moved into place occupied by Lily; witness knew her before that time; Granny had lived on Cherokee St., also on Choctaw St., she worked for witness and witness's mother while living on Choctaw Street (R. 1539); after Granny moved into Seneca Street house she did work for witness, took care of her in confinement and took care of child when it died (R. 1540); was frequently to Granny's house, never went further than kitchen; Granny had a son and

grandson; Jim Mayo was her son; Sammy (Nash) her grandson; Granny took care of a little boy—son of a woman who cooked for witness's sister—she died leaving this boy—named Walter Banks; never heard of any boy in Letcher family named Indian Tommy or Thomas Atkins (R. 1541); never knew of any woman being in Granny's named Indian Minnie or Minnie Atkins; moved away from Leavenworth, in Oct. 1887.

JOE A. ECKERT:

Lived in Leavenworth since three years old; knew Lily White in 1884–5–6, she was living on Seneca St. in Oct. 1884 (between 2d and 3d, south side of street); was at Lilly's quite often in the early part of 1885; thinks she moved from there fall of '85 or winter, as early part of '86 she moved to Choctaw St. (R. 1583–86).

WILLIAM JACKSON:

At Leavenworth since 1861; was living second house from Grodevant's in 1883, 4, 5, 6; working in prison corral straight in front of Grodevant, 100 yds. distant; friends with Grodevant; remembers Indian Minnie employed by Grodevant in fall of 1884 and was there in winter of '84, '85 and along in early spring; would often see Minnie in yard or on porch or in the window; she went with the two families sleigh riding down hill; she was not in family way that he heard of; did not give birth to child when she worked at Grodevant's; was in latter's employ only the one period. (R. 1615–17.)

JOHN M. PURCELL:

Was in Army at Ft. Leavenworth; saw Minnie at Grodevant's in early summer of 1885 (R. 1621), after that saw her frequently on the street and around the Fort in company with Oliver; was not in pregnant condition, to his knowledge; nothing to indicate it (R. 1622); heard of Minnie's giving birth to child at Mrs. Woods's year after; never heard of her bearing any other child than that one (R. 1627).

PATRICK COLLINS:

Lived diagonally across street from Grodevant's at Ft. Leavenworth; knew Minnie when she was at Grodevant's; she was there close to a year; witness and family visited back and forth with Grodevants; saw Minnie very frequently; to his knowledge Minnie was not in pregnant condition while at Grodevants; Minnie the only Indian girl who worked for Grodevants (R. 1627–31); Minnie was at latter's part of 1884 and part of 1885 (R. 1635).

MARY A. COLLINS:

Wife of Patrick Collins; knew Minnie Atkins when she worked at Grodevant's in 1884 and '85; Minnie worked there about a year; would see her frequently; Minnie was not in a pregnant condition to her knowledge when at Grodevant's. (R. 1643–45.)

WILLIAM E. DAWES:

Was assistant foreman to Grodevant from 1883 to Dec., 1884; was away Dec., 1884, Jan. and Feb., 1885; went back Mch. 1st, 1885, and there continuously until 1887; knew Minnie when she was there;

saw her occasionally; was not in pregnant condition so far as he could see. (R. 1655–56.)

LEWIS YOUNG:

Lived on north side of Ft. Leavenworth adjoining it in 1884, 5; knew Grodevant; saw Indian Minnie at Grodevant's when he passed there; never noticed her to be in pregnant condition. (R. 1662–63.)

Mrs. MARGARET JACKSON:

Knew Grodevant family; she was living at Ft. at that time two doors north; knew of Indian Minnie; saw her quite often while going back and forth in "her back door"; Minnie didn't show any signs of pregnancy. (R. 1669–71.)

MARY N. CUNNINGHAM:

Lived at Leavenworth and Ft. Leavenworth in 1884–85; knew Grodevants; passed their house frequently; knew Minnie when she worked there; saw her on the street and when passing; visited her (witness's) sister, who lived at fort, not far from Grodevant's; saw Minnie in spring or summer of 1885; remembers incident in May, 1885, when she and sister were picking wild flowers and came up back of Grodevant's house; saw Minnie in yard and was told Minnie was an Indian; nothing in Minnie's appearance would indicate that she was in a family way; was not acquainted personally with Minnie. (R. 1673–77.)

Mrs. HELEN BEELER:

Was at Ft. Leavenworth in 1884 and '85; lived about five blocks from Grodevant's; was often in

locality of Grodevant's in spring of 1885; saw Minnie in yard of Grodevant's one evening in May, 1885; relates same incident told by Miss Cunningham about conversation concerning Minnie; saw her a few times; Minnie did not appear to be in family way. (R. 1695–97.)

JAMES F. BIERLY:

Was at Ft. Leavenworth from 1883 to 1890, driving six-mule team at penitentiary; knew Grodevant; saw Minnie about latter's house in 1884–85; she was there about a year; thinks she came there in winter of 1884, 5 or early part of '85; would often see her at Grodevant's; frequently talked to her; she didn't appear pregnant; Minnie went to work for an Army officer later. (R. 1704–06.)

ROY REYNOLDS:

Clerk U. S. Census Office; in 1916–17 examined census of Leavenworth for 1890 for name Thomas Atkins; examined schedule sheets of each family in Leavenworth for 1890; name Thomas Atkins not there, nor Tommy Atkins; nor the name Commodore, either as a given or surname; neither was name Indian Tommy; identifies Govt. Ex. A–98 (R. 4813); original census returns for family of Molly Letcher 1890 census for street 119 north 3d; (no Thomas Atkins shown thereon); on these family or dwelling schedules were entered the names of all persons residing in that dwelling. (R. 1708–11.)

JOSEPH H. CALLAHAN:

Lived at Leavenworth from Feb. 5, 1884; knew Geo. H. Hyde, banker; used to deliver packages

there; saw servant there who looked like Indian; saw her also with Mrs. Hyde when latter would drive to office where witness employed—looked like Indian, never learned her name; also knew of Indian called Indian Mary; attention attracted to her because she carried baby strapped to her back as Indians carry them out West, saw her with baby in summer of 1887—baby about year old (R. 1721–24); Indian Mary or Indian Minnie who had baby was about 24 or so (R. 1726); saw girl at Hyde's in 1883, 84, or 85; girl at Hyde's and girl with baby two different persons. (R. 1728–29.)

ELI NIRDLINGER:

Attorney at law; resided in Leavenworth since 1882; lived on N. 3d Street for some time; knew Indian Mary, aged about 26–30 (R. 1730–32); this about 1883.

KATHERINE WILLIAMS:

Lived on reservation at Ft. Leavenworth; knew Indian Mary; also later heard her called Indian Minnie; witness used to give her coffee; never knew her to work at fort; claimed to have money coming to her; told witness she had had boy who was drowned; Indian Mary found dead out at Salt Creek. (R. 1732–36.)

Cross-examination:

Never heard of Minnie Atkins until just recently (R. 1738); came to Leavenworth in 1866; war was just ending.

JOSEPH A. CRANSTON:

Was in livery business with George Crilly in 1885; was located at 220–222 Seneca Street and 319 Cherokee Street; was at Seneca St. place every day and night, that place was burned out, which was later than 1887; remembers colored family across the street at 217 Seneca; Molly Letcher was woman's name; Lily White lived there before Letcher; another family also occupied house, other folks were white folks; never knew, saw, or heard of Indian woman by name of Minnie or Indian Minnie or Minnie Atkins at Letcher place, nor of Thomas Atkins or Tommy or Indian Tommy or Commodore; never saw Indian boy around there, nor around his barn, nor on the street. (R. 1743–45.)

Cross-examination:

Put more time in at Cherokee St. place, but was at both places; knew Letcher woman had some boys, Jim Mayo and Sam Nash; was in Denver part of summer of 1885. (R. 1746–47.)

CHARLIE HUDSON:

Also known as *Daniel Hudson*; first lived in Leavenworth in fall of 1884; knew Molly Letcher, lived at her house; was living on Cherokee St. between 2d and 3d; roomed there; thinks she moved from Cherokee to Delaware and then to Seneca Street; was rooming at her house when she moved off of Cherokee; roomed 3 or 4 years with her; thinks it was in fall that Granny Letcher moved from Cherokee; roomed not very regularly at Seneca St. place;

was married, lived with wife's father about year then back to Letcher's; Granny had some children, Jim Mayo, Sam Smith, Archie, and Walter Banks; doesn't remember any child there named Tommy or Indian Tommy, nor Indian woman called Minnie or Indian Minnie or Minnie Atkins, nor any boy named Thomas Atkins; no other boys there but those mentioned; ate at Granny's table for about 1½ years. (R. 1747–53.)

Cross-examination:

Might have been 1884 or 85 when he first went to Letcher's; fixes date as soon after Cleveland's election in 1884 (R. 1760); not sure that Granny moved first to Delaware from Cherokee; rather thinks Jim Mayo moved to Delaware and Granny to Seneca (R. 1762.)

Laura Thomas:

Lived in Leavenworth; knew Molly Letcher; she lived on Cherokee between 2d and 3d when witness first knew her; Molly moved from Cherokee to Seneca between 2d and 3d right across from Crilly's barn; witness lived at Molly's house on Seneca, soon after she moved there; Jim Mayo, Sam Nash, and Walter Banks were members of Molly's family; went to living at Granny's soon after her marriage to Charles Hudson; did not know of Thomas Atkins or Tommy at Granny's, nor of Minnie; only other child was witness's sister's baby—about six weeks old; next older child was Walter Banks. (R. 1762–69.)

Cross-examination:

When first married went to live at her father's; stayed a few weeks, maybe longer; went to Molly's; was there all that summer and all winter; longer than a year. (R. 1769–70.)

ELIZABETH BRADFORD:

Lived in Leavenworth; knew Granny Letcher from 1883 to 1897; Granny living on Shawnee St. when witness first knew her; Jim Mayo, Walter Banks, and Sam Nash were members of Granny's family; never heard of any boy named Tommy living at Granny's, nor of Thomas Atkins or Indian Tommy; never saw anyone named Minnie or Indian Minnie or Minnie Atkins around Granny's. (R. 1828–30.)

Cross-examinat:ion

Sadie James came to see her about case; simply asked her about remembering things happening at Granny's; asked her to write to witness's daughter, Georgie; Sadie asked witness about Indian Minnie; witness told her she had never seen her except possibly one night on street; saw this woman in 1883; might have been 1884; in spring of year—was election night. (R. 1831–34.)

BELLE REED:

Lived in Leavenworth for two years at Granny Letcher's with Jim Mayo, commencing in 1888, Sam Nash, Walter Banks, Lucian Scott (he came with Mrs. Scott); during time she was there witness never saw or heard of any boy by name of Indian Tommy or Tommy Atkins. (R. 1839–40.)

Cross-examination:

Lived on Seneca St. between 2d and 3d. Never heard of Indian Minnie. (R. 1845.)

M. BAHLER:

Chief of fire department, Leavenworth; connected with it since March 1, 1886; recalls big fire destroying Dr. Brock's house and other property on Shawnee St. between 5th and 6th, in June, 1886, night of 18–19 June. Fire at Kelly-Lyle Mill occurred Feb. 25/89; this he certified to by reference to record. (R. 1856–59.)

ELIZA LAVALLAY:

Remembers the occasion of the Kelly-Lyle Mill burning; had to leave house in which she was living; went that night to Granny Letcher's; had known Granny then for four or five years; had been to her place quite often, nearly every day in the afternoon; from night of fire lived there about one month; thereafter saw her in morning and afternoon, Granny then on Seneca St.; doesn't know and never heard of Minnie Atkins, Thomas Atkins, Indian Minnie, or Indian Tommy being at Granny's. (R. 1859–1861.) When she first knew Granny the latter lived on Shawnee St.; there was a girl there, Mattie Clark, who had child Mabel and another named Annie; Walter Banks, Sam Nash, and Jim Mayo lived with Granny; Etta Lower lived with Granny. (R. 1861–62.)

Cross-examination:

Knows Sadie James; relates time when Sadie came to her house and stated she was looking for a

boy named Tommy Atkins; later Sadie came and said there wasn't a Tommy Atkins, it was only a put-up job. (R. 1863.)

ALICE PAIRE:

Lived in Leavenworth all her life; knew Granny Letcher; lived there with her mother about two months after Kelly-Lyle's Mill burned; used to go there before that; Eliza La Vallay is her sister; Granny living then on Seneca between 2d and 3d; went after that to Granny's to see Mary Lower's baby; also there with Jim Mayo and Georgie (his wife), they ran a show there; never knew of a boy at Granny's named Tommy or Indian Tommy or Thomas Atkins—never saw him; did not know any woman there named Indian Minnie or Minnie Atkins. (R. 1885–88.)

Cross-examination:

Sadie James was at her house about a year ago (1915); talked to her about going to Father Shorty's to see if there was boy named Tommy Atkins there; next time Sadie came back and she said there wasn't such a thing as that—anyone by name of Tommy. (R. 1888.)

Redirect:

Relates conversation with Jim Hunt, who came to her and told her Dennis Jones wanted her to come to his office; that they wanted her to swear to a lie and she would get paid for it; Hunt told her "If Mr. Long is there he will tell you what to say and you will get paid for it"; told witness not to tell Dennis that he said so; "I am putting you next." (R. 1896.)

Recross:

Witness's brother-in-law made memo. of date Hunt told witness this (R. 1897); Hunt told her Dennis had sent him to see her (R. 1900); said if you go and say what they want you to say you will get some money. (R. 1901.)

MARY LOWER:

Mother of Etta Lower; Etta born at Scott's, in south Leavenworth; took Etta to home of Granny Letcher when Etta about one year old; stayed there about one year; Granny living on Seneca St.; moved out of Scott's house night Kelly-Lyle Mill burnt and went to Granny's for two months; Etta then at Granny's; had been there a year; no child at Granny's named Tommy Atkins or Indian Tommy; no woman there named Indian Minnie or Minnie Atkins; Sam Nash and a Walter, a girl named Nettie were members of Granny's family; Jim Mayo also there. (R. 1906–9.)

Cross-examination:

Would go to Granny's every evening to see child; would stay until about 5 o'clock—2 to 5 p. m. (R. 1918.)

JULIA T. CARTER:

Born in 1884; lived at Granny Letcher's for short time; went there with mother and sister (Liza LaVally and Alice Perry) night Kelly-Lyle mill burned; Etta Lower, Walter Banks, Lucian and Lyman Scott were other children there; Jim Mayo and Sam Nash grown up then; no other children; no child living

there named Tommy or Indian Tommy that she knew or saw. (R. 1924–25.)

GEORGE DALE:

Lived at Granny Letcher's about two years; was there when she died; had lived there about two years then; never had been there before then; knows of no boy named Indian Tommy or Tommy Atkins living there; Walter Banks, Jim Mayo, and Sam Nash living there with Granny; no boy there younger than Walter. (R. 1931–32.)

Cross-examination:

Didn't know Minnie Atkins, nor any Indian girl there; knew Granny just the two years before she died in '98 (R. 1932); doesn't remember a boy around there called Commodore. (R. 1933.)

JOHN PHILLIPS:

Lived in Leavenworth; was living at Seneca St. between 2d and 3d when Granny Letcher moved on Seneca St.; was around her house very often with Sam Nash; Sam and Walter and Jim Mayo were with Granny; no boy younger than Walter Banks lived with Granny during the three to five years he lived near her; no baby born at Granny's during that time; no Indian woman there; never saw Tommy Atkins or Indian Tommie, or Indian Minnie or Minnie Atkins. (R. 1935–37.)

Cross-examination:

Knew two boys in Granny's household; they were his playmates; was about 10 then. (R. 1937–38.)

FANNIE ISAM:

Lived in Leavenworth about three years with Alice Woods on Seneca St., second door to Granny Letcher's; nine years old when she went to live with Alice Woods; Walter Banks, Sam Nash, and Jim Mayo were in Granny's family; neither knew or heard of any boy in Granny's family named Tommy, Indian Tommy, or Thomas Atkins (R. 1969–70), nor of a woman named Minnie or Indian Minnie. Walter and Sam and witness played together; youngest child in Granny's house was Walter Banks (R. 1970).

EMMA GATEWOOD:

Lived in Leavenworth with parents when she was 15 years old on Seneca St. between 2d and 3d; Mrs. Feth lived in the stone part of the house that witness's family lived in; Granny Letcher lived in house just east; witness lived there four or five years; Sam and Jim and Walter were the boys in Granny's house; Walter and witness's brother played together; knew of no child named Tommy or Indian Tommy at Granny's, or around there (R. 1975–77), nor named Thomas or Tommy Atkins; didn't know any woman there named Minnie, Indian Minnie, or Minnie Atkins (R. 1978); no boy younger than Walter Banks in Letcher family.

On cross-examination relates incident of call from Hanford, who asked concerning witness's knowledge of Minnie and Tommy; at that time witness's brother arrived and Hanford questioned him and was told brother knew Thomas and played with him (R. 1982–87).

On *redirect* witness states that brother had conversation with Hanford and after his departure stated that "there was money in this case" (R. 1987); later brother rec'd a letter from some man who called and after reading it brother told witness there wasn't any money in the case (R. 1989).

NETTIE BROWN:

Lived at Leavenworth about two years with Jim Mayo at Granny Letcher's, on Seneca St. across from Crilly & Cranston's barn; Walter and Sam Nash and Jim Mayo were members of Granny's family; no boy there named Thomas Atkins, nor Indian Tommy; no Indian woman there; no person named Minnie or Minnie Atkins (R. 1997–98); married several months after she left Granny's. (Marriage certificate of witness, Govt. Ex. 55 R. 4910, shows marriage on January 31, 1889.)

RICHARD JOSEPH WINFIELD:

Knew Granny Letcher about the time she commenced living on Seneca St. between 2d and 3d; would be there two or three times a week; was carrying papers and shining shoes at time; continued going there two or three years; never saw an Indian girl there named Minnie or Indian Minnie, nor a boy named Indian Tommy or Tommy Atkins; Jim Mayo and Walter Banks lived there. (R. 2026–27.)

Cross-examination:

Born in 1868; was about Granny's when about 16; played around Granny's place, sort of gathering place boys have that play together (R. 2027); this was about 1885 (R. 2031).

MATTIE TUTT:

Knew Granny Letcher in 80's in Leavenworth; lived with her on Seneca St. in 1899; lived there 8 yrs.; was there when she died; been there 2½ years when she died; never saw anyone around the place called Tommy Atkins or Indian Tommy. (R. 2031–32.)

Cross-examination:

Went to live at Granny's when her mother died in July, 1899 (R. 2034); first knew Granny when she lived on Cherokee St.; next knew her when on Seneca St.; lived with Jim Mayo at Granny's; knew of no other boys there besides Sam Nash and Walter Banks (R. 2036).

MARTHA MILLER:

First knew Granny Letcher when latter was living on Seneca St. between 2d and 3d; Granny took care of witness's child for three weeks, witness working out; Granny was also keeping child named Etta; went to Granny's sometimes after she took child away; Granny later lived on Shawnee St. (Granny was running restaurant then at 3d and Seneca). Then Granny moved back to Seneca St.; knew Jim Mayo, Sam Nash, and Walter Banks, who were members of Granny's family; there was no child at Granny's named Indian Tommy or Tommy Atkins; never heard of him being there; never knew of any woman there by name of Minnie Atkins; never saw anyone that name. Walter looks something like an Indian. (R. 2040–42.)

Cross-examination:

Witness's child died at Granny's (R. 2043); put child at Granny's in 1890 or 1891 (R. 2047).

Redirect:

Walter Banks was about 7 or 8 when witness first knew him (R. 2048); Sadie James saw her "summer before last" (1914?); asked witness if she didn't remember about Indian Minnie; witness told Sadie she couldn't place her; Sadie asked about Tommy; witness told her she didn't know him; wanted her to swear there was a Tommy (R. 2048–49).

TOM M. MCKENZIE:

Age 53; came to Leavenworth when 7 or 8 yrs. old; knew Granny Letcher; became acquainted with her when he was about 16 or 17; knew her before she lived on Seneca St.; was at Granny's on Seneca street frequently, sometimes two or three times a week; began frequenting her place when he worked for Brock; Jim Mayo, Sam Nash, and Walter Banks were the members of Granny's family; when he first knew her, Granny lived on Cherokee St. between 2d and 3d, then moved to Seneca St. Granny was living on Seneca St. before witness went to work for Brock; witness knew Granny and family before he worked for Brock; and he continued to go there until Granny's death; never saw or heard or knew of an Indian boy around Granny's named Tommy Atkins or Indian Tommy; neither did he know or hear of an Indian woman there named Indian Minnie or Minnie Atkins; worked for Brock 10 or 12 yrs. (R. 2049–51.)

Cross-examination:

Quit working for Brock in 1902 or 1903, when latter died (R. 2052), it was a year or two or three after Granny died (R. 2053); believes Granny moved away from Seneca St. to Shawnee and then back again (R. 2054).

DR. C. M. MOATS:

Physician in Leavenworth since November, 1888, practicing; knew Granny Letcher first when she was on Seneca St., south side near 3d, just east of Van Tyles livery; was Granny's physician, began treating her in early part of 1889; treated her at her home; called there frequently; did not know of any child in Granny's family named Indian Tommy or Tommy Atkins; recalls seeing two little girls there at time Granny was quite low—they weren't there long. (R. 2059–62.)

Cross-examination:

Dosen't remember any people around Granny's except Sam Nash and Jim Mayo.

MRS. MARY NASH:

Stepmother of Sam Nash; Molly Letcher raised Sam; she lived on Cherokee St. and Seneca St.; did not visit much at Granny's; Sam would visit them (her and her husband); was at Granny's funeral; died on Seneca St. about 1900; Granny raised Sam Nash, Walter Banks, and Jim Mayo; never heard Sam, Granny, or the others mention any woman named Indian Minnie living at their home; never heard them say anything about a boy named

Indian Tommy at their home, never saw such a boy there, nor such a woman (R. 2065–68). Rec'd letter from Sam Nash (Govt. Ex. 52, R. 4908); met him on street after that; Sam said he was getting along nicely; said Mr. Page was a very nice gentleman and had treated him awful nice (R. 2070).

GEORGIA FLINT:

Married Jim Mayo (Jim Phillips) in October, 1890; they lived with Jim's mother, Granny Letcher, she was then living on Choctaw St. (fall of 1890); Granny moved to Shawnee St.; Jim and witness did not stay with Granny until she moved off Shawnee St.; they moved down on Shawnee and ran a restaurant; later went back to Granny's when she was again on Seneca St.; visited Granny some while they ran the restaurant and frequently when witness was keeping house on Cherokee St.; was in Leavenworth from October, 1890, to 1895 or 1896; during this time, besides Jim and witness, Sam Nash and Walter Banks lived at Granny's; also a little girl named Maude; the latter was at Granny's on Choctaw St.; no boy at Granny's named Tommy or Indian Tommy or Thomas Atkins that witness knew of. (R. 2075–77.)

JOHN C. KETCHESON:

Lived in Leavenworth since fall of 1886; printing and binding business; printed the 1885 and 1886 directory of Leavenworth; identifies them; Government reads in evidence entries showing Lily White living at 217 Seneca St. in 1885, Granny Letcher at

215 Cherokee St., Jim Mayo at 215 Cherokee St.; also Sam Nash same as Jim and Granny. Directory of 1886 shows Granny Letcher, Jim Mayo, and Sam Nash at 217 Seneca St. and Lillie White at 326 Choctaw St. (R. 2085–87.)

MRS. A. G. WILDS.

First met Minnie Folk in April, 1915; first went to Minnie's house in July, 1916; asked by one Kohler to ascertain when Minnie was going to leave Seattle, also talked to Betty Mann before she went to Minnie's; Betty and Kohler appeared to be associated in the matter; Betty told witness to just go over and let Minnie talk, see what she had to say and report to her; witness became very friendly with Minnie (R. 2096–98). Minnie talked very freely about her affairs; Minnie told witness that Hanford had beaten her out of money; that Page had paid out $10,000; the first $5,000 for Minnie and the other for Hanford for his services, that Hanford kept the first $5,000 himself and when she went to bank to draw some money there was not a nickel there (R. 2099); Minnie said she had called Hanford down and dropped him cold; witness asked how she came to take Hanford back and Minnie said Long talked her into it; that Long said Hanford knew so much about the case that best thing to do would be to keep him in the case because they had told so many lies at the first trial. (This was in July and August, 1915.) Minnie said Long gave her drinks at the first trial and wanted her to

claim the nigger kid and she refused (R. 2099–2100). Minnie said Hanford was a crook; that Page and all of them made her swear to lies and that if she had had her way in the first place she wouldn't have gone to law about it but Page wouldn't have it any other way; that she had a different story every time, that the plans had to be changed altogether after the first trial because they had all sworn to lies; that they made her swear to lies and tried to make her claim the nigger kid; in making these statements lies were referred to frequently by Minnie; Minnie spoke of her visit to Leavenworth and said that the niggers there all swore they knew her and that she never saw any of them before in her life until she went to Leavenworth (R. 2100); she had to give Sadie James credit for finding her (that Minnie gave Sadie a good many facts about herself, but could have given her more), that Sadie had been employed by Page to help manufacture the story of the nigger kid, that Sadie had double-crossed Page and told the truth to the Government and got another $1,000 for that; Minnie told her Long "could make you lie and make you think that you were telling the truth"; said he had made her swear to lies all right, but that he couldn't make her swallow that negro dope. Kohler and Betty told witness they wanted this information in good cause, that Minnie was trying to steal some money away from her child who was going ragged in the streets—called him Tommy Atkins (R. 2101).

Minnie often referred to Tommy Atkins but never as her son or boy; that they had paid witnesses to swear that Tommy was drowned at Leavenworth; Minnie said "I get my money on a dead Tommy Atkins"; the other side still searching for a live Tommy. Page and Long told her if the boy was alive she wouldn't get a cent; that he had to be dead. She later said if other side found the live Tommy she would get half and he would get half.

Witness was instructed by Betty Mann to try to get Minnie to admit there was a live Tommy Atkins; witness asked Minnie if there really was a Tommy Atkins and Minnie hesitated and then said "Sure there was a Tommy Atkins; he is on record and they can't go back on that" Betty Mann, when she was ready to leave Seattle, gave witness the information that there was no Tommy Atkins. Witness advised Mr. Nixon of this and Mr. Talley (Nixon was the one at head of case who employed her; Talley was a lawyer at Tulsa); also advised Interior Department by letter. Reported verbally to Nixon, who had called her from Seattle to Tulsa to check up work done in Seattle by other operatives (R. 2102–03); some of the reports related conversation in which things were supposed to have been said in witness's presence which were never said in her presence (R. 2104). Dictograph had been installed at Minnie's; witness knew of it. Minnie regretted having testified falsely; said if she had her way she would have told it her way in the beginning, but Page wouldn't let her; he wanted to go to law (R. 2106).

Cross-examination:

Govt. Ex. A–101 (R. 4813) is introduced in evidence, letter of witness to Secretary of the Interior. (R. 2150.)

Redirect:

Minnie told witness that Page paid her a salary for seven months before he had any right to do so; it was done on the quiet; said she could have been receiving that salary all her life but that it was cut off after the first trial after Mr. Allen had caught them in the lies. (R. 2156.)

RELATIVE TO CLAIM OF NANCY ATKINS.

Government introduces portion of testimony of *Nancy Atkins* given Feb. 9/14 in case *Nancy Atkins et al.* v. *H. U. Bartlett et al.*, pending in District Court of Creek County, Oklahoma—

Lives at Nowata, Okla.; Micco T. Harjo is her guardian; never married; had female child born to her—born dead; never had any other child; had sister Minnie Atkins and brother Lee Atkins; last saw Minnie in 1895; living at Wagoner when child born; was working at Barnard Hotel; baby born at Mrs. Williams; never had any child with her at Wagoner; never worked at McNally's restaurant; doesn't know Thomas Atkins. (R. 2162–63.)

ROBERT L. BAUGH:

Examined records in office register of deeds Creek County, Okla., with relation to instruments filed for record affecting title of Tommy Atkins allotment; other than the patents no instrument of record prior

to deed purporting to have been executed by Minnie Atkins to H. U. Bartlett in October, 1912. First instrument of record to Gem Oil Co. was lease of Alexander McNab and Minnie E. Folk and Harry B. Folk executed June 24, 1914, recorded June 29, 1914, a trust deed by Minnie Folk to McNab dated June 13, 1914, recorded June 22, 1914. (R. 2159.)

ELNORA MAYSHACK:

Lived at Brushy Creek near Wagoner, Okla., for about ten years; was living at Wagoner at the time of payment made to the Creeks in 1890; is a freedman of the Cherokee Nation; knew Nancy Atkins in 1890 and for about a year before that; Nancy lived with witness at time of 1890 payment; had been living with her then about six months, in Wagoner; Nancy had child born in morning; died in afternoon, not at witness' house but in a tent "across the track;" witness was present at birth; Nancy had received one payment before that time and got a payment after child born; Nancy told witness she had no other child; Nancy lived with witness about two years after child was born in Wagoner; then witness went to Brushy Creek; Nancy went with her and stayed about one year; witness would see Nancy after that every two or three months; Nancy never had any other child than one mentioned; no boy lived with Nancy while witness knew her. (R. 2163–67.)

MICCO HARJO:

Citizen of Creek Nation; has known Nancy Atkins for 10 or 12 years; is her guardian; at time of his appointment as guardian Nancy lived at his house in

Nowata; Nancy first told him that child she had was a girl, then said it was a boy; first conversation about it was in 1912; first said it was a boy after Hammett had been to see her about a lease; Nancy had been told that if child was boy she could get lots of money out of it. One Hammett and one White both came up about a lease. Nancy never told witness child was a boy until after she was told if it was a boy she could get money; child was born dead; witness told White what Nancy had said about child being girl, but White said he had evidence that it was a boy. (R. 2168–72.)

ELIZA STERLING:

Was present when Nancy Atkins gave birth to child at Wagoner; child was born dead—it was a girl; child born at Elnora Williams's house; Nancy stayed around Wagoner about 6 or 7 years off and on; then went to Nowata; witness saw her frequently while in Wagoner; Nancy lived with witness part of time; knew of no other child that Nancy had. (R. 2179–82.)

Cross-examination:

Thinks child was born in 1889; witness's mother was midwife and witness went with her on this occasion (R. 2183); changes date of birth of child to 1890 (R. 2186).

Redirect:

Nancy used to lead around boy named Joe, son of Betsy Birney—about 3 or 4 years old; witness didn't know any boy in Wagoner named Thomas Atkins. Nancy took care of Minnie's children, Charlie and

Harvey Harrison, for a while. R. 2186–87. (Govt. Ex. A–104, R. 4821, certified copy of sentence of Nancy to penitentiary introduced, showing date of sentence December 23, 1890. R. 2189.)

ANGELINE MOODY:

Knows Nancy Atkins; knew her parents; was present at birth of child to Nancy at Wagoner in house of Elnora Williams; doesn't know year child born, but before Nancy went to "pen"; it was at the time the Iron Mountain Railroad was being built through Wagoner on north. Child was born dead; this was only time Nancy in family way; child born was girl. (R. 2190–91.)

HENRY ANDERSON:

Lived in Wagoner when Iron Mt. R. R. was being built; was straw boss on gang working on road; became acquainted with Nancy Atkins when he first came to Wagoner; she was then in family way; knew of child being born to Nancy; happened to go to Elnora Williams to look up one of his men, Ellis Harris, and found him digging a hole in the yard; asked him why he didn't come to work and Harris said Nancy had found a baby that night and he was going to dig a hole and put it down there; had a box lying on ground; witness picked off the top and looked at it and saw a little newborn baby in it; Harris said it was Nancy's child; saw Nancy frequently after that for about 5 or 6 years; she was not in family way after that child was born; there was a little boy belonging to Della Snow that ran around with Nancy;

it "run around there with all them women"; witness well acquainted in town; knew a Thomas Atkins who lived north of town ten miles, son of Dick Atkins. (R. 2196–99.)

Cross-examination:

Thomas Atkins he knew was son of Dick Atkins; he was there about the camp; was half negro, part Indian—half brother of Nancy's (R. 2205–06); this Thomas had a sister named Chaney Trent (R. 2208).

DORA SMITH:

Went to Wagoner in 1894 or 1895; lived there 18 or 19 years; knows Nancy Atkins; knew her at Wagoner; she had two little boys who she said were Minnie's boys; Nancy told her once or twice that she was the mother of one child; that it was dead; Nancy never told her of having a boy living. (R. 2209–10).

PATSY WILLER:

Lives in Wagoner; has lived there for 28 or 29 years; was married December 28, 1887, and next day went to Wagoner to make it his home; knew Nancy Atkins; first knew her a few years before witness went to Wagoner; Nancy came to Wagoner after witness; when she came, Nancy was in family way; Mandy Burnett was a midwife; she told witness she was worried over Nancy's condition, as the baby had died; witness understood Mandy to say child was a boy; Mandy told witness the child was buried. Nancy remained in Wagoner 6 or 7 years after this; witness never knew her to be in family way again; would see her frequently; saw Nancy with two little

boys, who she told witness were her sister Minnie's; no boy named Thomas Atkins around town that witness knew of. (R. 2211–15.)

HENRY KIDD:

Lived in Wagoner from 1892; knows Nancy Atkins; didn't know her when she went to the "pen". Betty Mann and Nancy met witness on street (some time ago) and Nancy told witness she never had but one child and that it was a girl and came dead; Nancy then turned to her lawyers, who were in a buggy, and said, "I told that and I told you Mr. Kidd would tell the truth." Didn't know any Indian named Thomas Atkins at Wagoner; there was a colored boy; witness saw him hauling wood; he was Dick Atkins's boy, brother to Chaney Trent; this boy died when about 13 years old. (R. 2220–22.)

LULA SMITH:

Moved to Wagoner in 1891; knew Nancy Atkins; worked with her at Barnard Hotel in Wagoner; Nancy told witness she had a child but that it was dead, either born dead or died soon afterward. Nancy left Wagoner about 5 or 6 years after witness came there; saw Nancy frequently; Nancy had been in "pen" before witness came; Nancy never in family way to witness's knowledge; never knew of any boy around Wagoner named Thomas Atkins. (R. 2223–25.)

MARTHA HARDRIDGE:

Lived in Wagoner since 1891; knows Nancy Atkins; first met her at Barnard Hotel, where witness

and Nancy were working; Nancy was there when witness came; roomed together; worked there off and on for eleven months together. Nancy told witness she had given birth to a child born dead. Nancy didn't have any child with her during that year. Knew Joe Birney when he was a small child; he and Nancy would be around there together, and very often Joe would come to hotel where Nancy worked; witness never knew a Thomas Atkins living around Wagoner (R. 2233–34). Joe was about 5 to 7 years old in 1891 (R. 2235).

PATSY JENKINS:

Lives between Wagoner and Choteau; knows Nancy Atkins; she lived awhile at his house; later brought two boys there, Charlie and Harvey—small boys; knows no boy around Wagoner named Thomas Atkins. Nancy told him she had had a girl born dead—this was told before she brought the two boys over. (R. 2235–37.)

Cross-examination:

Nancy said the boys were her sister Minnie's children. (R. 2238.)

SARAH COATS:

Knows Nancy Atkins; first knew her in 1891, when she was working at Barnard Hotel, Wagoner; witness was working for McAnally (another hotel); saw Nancy frequently; knows no boy, Indian or colored, around Wagoner named Thomas Atkins, or Tommy. (R. 2241–43.)

STUART BREWSTER.

Lawyer; lives in Leavenworth; as a boy played with Alva Adams and boys with whom latter played in 1897–98; names number of boys with whom he played, including Tommy Owens and Tommy York; never was any boy in that crowd at that time named Indian Tommy or Tommy Atkins. (R. 3902–03.)

ALEXANDER J. MACNAB.

First learned that Minnie Atkins claimed to be mother of Thomas Atkins when Sadie James was at Fort Lawton. It was on advice of Hanford and Mrs. McCombs witness got Hanford into the case; he was employed by Minnie; had talked to Sadie and Minnie together at time he called Hanford into case. It was while Sadie was still in Seattle that deed of trust was signed by Minnie to witness; Hanford was sent to Oklahoma by witness as trustee, and witness as trustee made lease to Gem Oil Co. Consideration was $10,000 and one-fourth interest in the oil. Nothing in lease or outside of it that witness remembers that they (Gem) were to pay any attorneys fees of the trustee. Consideration paid in two checks of $5,000 each, payable to Hanford. The first $5,000 was appropriated for attorneys fees and expenses, other $5,000 to be turned over to Minnie at a later date, the reservation made of Minnie's $5,000 because Gem people wanted to get her testimony before it was paid. This was explained to Minnie and was satisfactory to her. Witness explains this did not mean testimony before court, because they had no

hope of bringing case to trial within the time stipulated that money should be paid. (R. 4090–94.)

Five thousand dollars was turned over to Hanford and witness by Mrs. Folk (Minnie); of that Hanford took $3,000 for expenses to which he had been put and to carry on case; $2,000 was taken by witness, two hundred of which was used for expenses in case, the balance of $1,800 being on deposit as a fund on which to draw for any legal or other purposes. Minnie wanted witness to keep it as his commission, but he states he could accept no commission for the service; that he did not feel like accepting a commission from her, as he was an officer and she the wife of a soldier. Took the money as a means of protecting Minnie's interests in case it became necessary for him to take legal action involving expenditure of money. (R. 4095.)

Besides executing lease to Gem Oil Co., receiving the $2,000, witness counseled with Minnie and her husband a number of times prior to relinquishing the trusteeship. Nothing paid to or promised him other than $2,000 by anyone connected with this case. (R. 4096.)

Remembers Montgomery having conversation with Minnie in presence of witness and Hanford, in December, 1914, at witnesses office. Minnie signed a statement in regard to Thomas Atkins, which was turned over to witness with understanding that Montgomery was to wire Washington to secure immunity for Minnie from prosecution for previous con-

trary statements made to court, and when immunity granted, statement was to be turned over to Montgomery. Witness turned it back to Minnie the following day, or within two days, and has not seen it since. (R. 4096–97.)

The substance of the statement was that Minnie had never had a son named Thomas Atkins and that she had had only three children—a girl that died and two boys, Charlie and Harvey. Did not contain statement that Thomas Atkins appearing on 1895 Creek roll was placed there by Minnie and represented name of her father.

Montgomery objected to return of statement to Minnie. He showed a telegram from Washington which dodged the granting of immunity but he still felt he could obtain it.

Statement was signed by Minnie in witness's office and in his presence. (R. 4098.)

Cross-examination:

Minnie did not appear frightened by Montgomery's statement about her committing perjury in her former testimony; her main idea seemed to be to get rid of the case. (R. 4102.)

Returned statement to Minnie because Minnie told him that it was false, that Montgomery had persuaded her to sign it, and upon thinking it over she concluded it was wrong to sign it; that she did have a son named Thomas. This was day following day statement was signed. (R. 4102–04.)

Mrs. McComb first asked witness to see Minnie about this land matter; interviewed Minnie, who told

him she had a son Thomas; that he had some claim on land in Oklahoma; that he was dead and she was entitled to the land and had been offered $2,000 for it and was going to take it; she knew nothing of the value of the land.

While at Minnie's, Long came in and Minnie told him that he was to talk to witness as her representative. Long stated he wished to secure deed for land (or lease, witness not sure which). Witness told him he would make investigation to ascertain value of land, title to it, and what offers others would make. Long left some papers which he had prepared for signature. Thereafter witness telephoned Hanford and brought him into the case. (R. 4105–07.)

Sadie James came to Minnie's that same morning after Long had left and told witness and Hanford, who had arrived, Long was not the man she was to bring out to make deal (Bartlett); that he had not yet arrived and urged that no deal be made with Long. (R. 4108.)

Long came again while Sadie was there that afternoon and witness talked to him on way to Post from Minnie's. Long expressed pleasure that responsible people were to handle matter and said all that his firm asked was to be given the same chance as others.

Went back to Minnie's later that afternoon and found she had made up her mind to go with Long to Spokane, where her husband was temporarily stationed, and sign deed for consideration of $4,000.

Minnie thought $4,000 was all the money she could use in her lifetime. (R. 4109.)

Hanford and witness decided it would be very foolish for her to sign deed without knowing what property was and tried to dissuade her from going, and finally did succeed in getting her to go up with them and talk it over with Mrs. McComb. As a result of this talk, it was decided that Minnie should deed over property to him as trustee, so that she wouldn't do anything such as she contemplated doing—deeding property to some one for a small sum without knowing what it was. (R. 4110.)

When witness first saw Minnie that morning before he met Sadie or Long, Minnie told him of Tommy's birth at Leavenworth when she was young and "inexperienced"; seemed embarrassed in telling it. Didn't say what particular place in Leavenworth she had had child; that she turned the boy over to somebody to raise; didn't know his present whereabouts or what had become of him, as she understood boy was dead. (R. 4111-12.)

When Sadie James came, she told witness and Hanford that detectives had followed her. He and Hanford went out and talked with them later; didn't find out who they were. (R. 4114.)

Sadie did not, so far as witness remembers, say anything about Tommy except that he was dead. (R. 4115.)

Sadie had something to do with Minnie's changing her mind about going to Spokane with Long. (R. 4116.)

Went to Mrs. McComb's to get Minnie to turn over matter to witness; Minnie didn't go with them; Hanford and witness went there to get Mrs. McComb to influence Minnie. After talking with Mrs. McComb, they sent for Minnie, and agreement to deed to witness was made and trust deed executed. (R. 4117.)

Cross-examination by HANFORD:

Remembers that Sadie told Minnie that she (Minnie) didn't know that Tommy was dead and that Minnie said she didn't know that he was dead of her own knowledge. (R. 4121.)

Was reluctant to accept trusteeship. No understanding between Minnie or any of the parties that any compensation was to be received by witness. Objected to provision in lease for percentage of profits of lease being paid trustee, but was told by Hanford this was to make it irrevocable, so that Minnie could not revoke at will. (R. 4124-25.)

Agreed to see that Minnie got $5,000 for lease, and it was understood when Hanford went to Oklahoma that Minnie must receive in cash at least as much as she would had she deeded to Long. "We raised it a thousand dollars, in order to make it so much better than a deed would have been; so the sum of five thousand dollars was to be obtained for Minnie in cash for her lease." (R. 4127.)

When Montgomery interviewed witness he stated the government had decided to take a hand in the matter, as the case seemed rather involved, and that he was there for the sole purpose of getting the facts for the benefit of the government. He gave the im-

pression to witness that he was not interested in the case in any way; didn't state government's position in the case. (R. 4130-31.)

Just before Minnie signed the statement made to Montgomery she asked "What would happen if I sign that thing and it isn't true?" and that both Montgomery and he told her that if there ever was a time when she could get down and tell a truth, it was then and if it wasn't the truth she should not sign it. (R. 4133.)

Doesn't remember Minnie making any declaration at or just prior to signing statement that she was the mother of Tommy Atkins and that he (Montgomery) could never make her change that. (R. 4135.)

Remembers that Hanford charged Montgomery with misrepresenting his status and that he was merely an attorney for an opposing interest (the Creek Nation), and that Montgomery stated he only wanted to find out the truth. Also remembers that Minnie asked if land reverted to Creek Nation if her boys would get a share. Montgomery told her if land reverted to Creek Nation all the members of the Nation would have an equal interest in it. (R. 4135–37.)

Called up Montgomery on the telephone the next evening after statement was signed and told him he (witness) was convinced statements made therein were untrue; that he (Montgomery) had in a measure been unfair; that he had used witness's name and

had gotten at Minnie through witness indirectly; that witness had told him from the start he didn't wish him to do that; that he (witness) didn't want to have anything to do in the case; that he (Montgomery) through misrepresentation in a way had gotten Minnie up to witness's quarters to sign this statement and that all the time, directly opposed to witness's wishes, he had operated on Minnie's sympathies through his apparent influence with witness and his apparent standing with witness, and witness felt that he (Montgomery) had been unfair; that he had gotten witness into the case again when he didn't wish to be; that he had used witness's influence over Minnie to get this statement signed and that witness felt thoroughly convinced that it was untrue; that he hadn't got the immunity that was promised and if he had it would have made no difference; that witness was thoroughly convinced that the statement was untrue and he was going to turn it back to her. (R. 4137.)

Didn't want to be concerned in case, because he had carried on as far as he had intended to; it was a great deal of trouble and worry and he felt that Minnie was secure and wouldn't be bilked out of the property and he gave it over and deeded back. The understanding with Minnie at time that he took the trusteeship was that it should extend only until that stage was reached. (R. 4138–39.)

Hanford told witness at that time, or a little later, that Montgomery was not a disinterested official of

the Interior Department, but that he was representing a special interest that was a co-claimant for the property. Doesn't remember when he first learned of Creek Nation's interest and that Montgomery's object was to obtain from Minnie a statement against her own claim, so as to have it revert to Creek Nation. (R. 4139–40.)

Redirect:

Minnie told him she had put children on roll to get money for them; she had drawn the allotment for them while going through Oklahoma. (R. 4142-43).

Doesn't recall whether Long's first offer was $2,000, but his second, the one in the afternoon, was $4,000. Believes there was with papers Long left a statement for Minnie to sign, stating that Minnie was mother of Thomas Atkins and he was dead. (R. 4143–44.)

Doesn't know whether Sadie James had talked to Minnie before she told him about having Tommy at that time; Minnie did tell of having an offer of $2,000 for the property and that a man was coming during the day to talk over and complete the deal. (R. 4145.)

The $2,000 paid to him out of first $5,000 received for lease was paid to witness as his fee for services. He didn't see anything improper in accepting it but later felt that he should return it to be disbursed in Minnie's interest. The further disposition of the $2,000 is a matter which concerns him personally and a matter of his own desire; he is under no legal

obligation to pay any part of the money in furthering the litigation. (R. 4147–49.)

Had information about interest of Creek Nation and of filing made upon this land by one Garrett and understood that action by Creek Nation was only preliminary to the filing for title by Garrett interests, before he saw Minnie the day following her confession and *thinks* he had it when Minnie signed the confession. (R. 4150.)

Hanford saw Minnie the night of the day she made the confession and thereafter saw witness. (R. 4150.)

Deeded back property to Minnie because it was desired by her, and witness felt she was distrustful of him. (R. 4151–52.)

Recalls that Montgomery showed him telegram signed by Mr. Sells, Commissioner of Indian Affairs.

Doesn't remember at time of Minnie's confession whether Hanford told Minnie that if she signed confession it would mean that she would lose right in the allotment, but he does know Minnie so understood because she asked if that was the case and was told it was. Hanford was present and advising her then taking part in the discussion. (R. 4152.)

Cross-examination:

Is quite sure but doesn't know of own knowledge, Minnie had received the $5,000 when she signed confession. (R. 4153.) Hanford said to Montgomery that talk about immunity for Minnie had nothing to do with case, or "can not be done"; Hanford took issue with Montgomery over question of whether it was necessary or could be gotten. (R. 4155.)

T. HOWARD MORTON:

Lived in Wagoner, Oklahoma, since 1891; knew Nancy Atkins about time he went there (1891); was with Davis & Jones Mercantile Co.; never knew of Nancy's having boy named Thomas Atkins or any living child; knew Thomas Atkins, son of Richard Atkins; he died when 10–12 years old; doesn't remember year; saw him frequently around store; can't recall ever seeing him with Nancy; this Thomas hauled wood for witness. (R. 4298–4300.)

JIM CHILDERS:

Citizen of Creek Nation; son of Napoleon Bonaparte Childers; brother of Ellis Childers; knew Dick Atkins; they lived about 1½ miles from father's place northwest of Wagoner; first knew Nancy Atkins in 1890 in Wagoner; knew her when she was in a family way; she was living at Birney's when in that condition; saw her two or three months after this condition disappeared; up to about 1894; witness worked in Davis & Jones' store, began in 1894, worked a year; would see Nancy often in store; knew Thomas Atkins, son of Dick Atkins; would see him at the store; would see him sometimes with Nancy for two or three days. Thomas was about four or five years old; never knew of any other Thomas Atkins in Wagoner. Nancy kept Charlie and Harvey, Minnie's children, for awhile. Witness took Harvey and kept him; Nancy asked him to take care of him as she couldn't; he was then four or five years old; kept him until 1898, then turned him over to Kate Holden; Birney children

and others would be around with Nancy—would come into the store. (R. 4300–06.)

THOMAS AUGUSTUS MOZEE:

As a small boy played all over town of Leavenworth; played around Ella Abbott's place over Abele's drug store; played with Tommy Owens, Willie Owens, two boys named Dix; played around Crilly's barn on Seneca Street between 2d and 3rd with Tommy Owens; witness sometimes called Tom Doyle; Tommy York also played with witness; didn't know any boy named Tommy who lived or played up on Seneca Street other than Tommy Owens, Tommy York, and himself.

Played on the stairway leading upstairs over Abele's drug store where Ella Abbott lived; no boy that lived there played with witness; did not know of any boy living there; did not know any boy in town called Commodore or Tommodore; knew Mr. Crilly by sight; Tommy Owens called witness Tom and did so around Crilly's barn. (R. 4482–87.)

Knew Walter Banks; he was older than witness; he lived on Seneca between 2d and 3d. (R. 4490.)

Mrs. ADA ARMERLY VAN DUZEE:

Testifies she lived in house on 2d Street about a block from 217 Seneca Street; knew that there was a family living across the street from Crilly's barn who were running a house of ill fame; they were white people; people in her block talked over the matter; it was very obnoxious to them. This was in 1885. (R. 4505-09.)

RICHARD NICHOLS:

Colored. Was a witness in case of Nancy Atkins et al. *v.* Minnie Atkins et al.; gave testimony by deposition at county courthouse at Leavenworth on October 7, 1914; when he came off witness stand Rube Smith gave him $5.00; asked if anybody went over his testimony with him before he went on stand, witness replied "No, sir," and made like answer to an inquiry if anybody had talked about what the other witnesses testified to before he went on stand. Government claimed surprise because this was in conflict with statement made prior to going on the witness stand (R. 3254–55). Witness then cross-examined by government counsel.

Witness admits talking to assistant United States attorney and Mr. Allen one or two weeks previous; denies that he said in conversation with them that Rube Smith and Dennis Jones went over testimony of other witnesses with him before he went on stand. Admits having conversation with Fred Cook and Mr. Allen in Codding's office in Leavenworth about a year previous, but denies saying then that he knew nothing about the case; that Rube Smith told him that he could just as well make some money out of it and that Rube went over testimony of the other witnesses with witness and that he (witness) went on stand and swore to just what the others

were swearing to; states that a stenographer was there taking down "some stuff," but that witness wouldn't sign any statement. Denies that he stated that reason he wouldn't sign was because Dennis Jones wouldn't let him; admits that he testified in 1914 that he knew Minnie Atkins, but denies that he told government officials that Dennis Jones and Rube Smith had put him up to say that and that in fact he didn't know her. (R. 3256–57.)

Cross-examination:

Was threatened by government officials with prosecution for perjury if he didn't tell truth and change his statement; that "he had better get right." (R. 3258.)

Redirect:

Admits first talk with Mr. Allen; was in office when stenographer took down what was said, and that witness agreed to return and sign statement when transcribed; didn't go back.

Q. And you told Mr. German and Mr. Bagley and myself in the National Hotel that the reason that you didn't come back was because Dennis Jones told you not to come back?

A. I might have had, but then if I had Mr. Bond and Mr. Jones and them—they was on the other side; of course there wasn't no use of me going back there unless I was going to change that, and I can't change that and tell the truth, and there wasn't no reason for me to go back. Wasn't no reason to care if I could read it; I could tell, but there wasn't no

use of my going back. It wasn't worth while. (R. 3259.)

Cross-examination:

States that he is deputy sheriff and janitor at courthouse and expects tip when rooms are used; asked Rube Smith what was going on and was told depositions were being taken "about Minnie Atkins"; said he knew her; this was overheard by Hanford, counsel for Minnie, who put him on stand; that was all the conversation had. (R. 3260–61.)

Re-examination:

Asked if he had not stated to government counsel that various witnesses who had testified had received money for so doing admits partially that that was true, and admits that the defendants counsel arranged or promised to take him to Oklahoma as a witness; does not directly admit promise of additional money to him or that he made statement that such promise was made. (R. 3262–63.)

After interview with government counsel at Codding's office, witness went to district judge and told him about it, and that he had testified to truth on stand. Judge told him to stick to truth. (R. 3263.)

Recross:

Admits that government counsel in Codding's office told him that all they wanted was the truth about the matter. (R. 3265.) Denies that he told government counsel that he was afraid to testify for government for fear that he would lose his job. as Rube Smith and Dennis Jones were strong in

politics (R. 3268); admits that counsel for government told him that government could not and would not pay a cent for testimony (R. 3271–72).

CHARLIE ANDERSON (introduced by defendants):

Gave deposition October 7, 1915, in case Atkins *v.* Atkins; went over to courthouse to see who were to be witnesses; didn't know until called that he was to be a witness; was paid $5.00 by Rube Smith after he had testified. (R. 3273.)

Dennis Jones hired and paid him to trail or shadow Sadie James. (R. 3283.)

For Minnie Atkins.

EMILY RIPLEY:

Went to Fort Leavenworth, Kansas, in 1878; husband was chief clerk of military prison; knew Mrs. Lettie Grodevant quite intimately; visited her frequently and Mrs. Grodevant visited her; saw Indian Minnie at Grodevants; she appeared in family way—saw her through a window—and discussed it with Mrs. Grodevant; appeared advanced; that was in 1885, before August; saw her afterwards, condition normal; Mrs. Grodevant told her Minnie had had a baby. (R. 2797–99.)

Cross-examination:

Only time she observed Minnie around fort was while she was living at Grodevants; knew Mrs. Grodevant very intimately before her marriage; lived next door to her at fort; Mrs. Grodevant, for about 2 or 3 years after marriage, lived next door to witness;

doesn't remember year Mrs. Grodevant was married; remembers birth of a stillborn child to Mrs. Grodevant the first year of her marriage, but can't tell the year it was. (R. 2801–02.) Doesn't know what became of Minnie after she left Grodevants. Reason witness gives time of seeing Minnie pregnant while latter was at Grodevants is because that is only time she ever knew Minnie at the fort (R. 2804); was in Mrs. Grodevant's house at time she noticed Minnie—latter was in the yard; had seen Minnie a few months before; can't tell how long afterwards she again saw Minnie; noticed condition of pregnancy but once; fixes year when she saw Minnie thus as 1885, because that year she gave birth to a child and buried one (R. 2805); child born in January, 1885; the one that died, died in August; had not seen Minnie until latter part of May or first of June, 1885; witness had gone frequently to Grodevants prior to birth of her child in January, 1885; Minnie was not working for Grodevant then (R. 2806); went to Mrs. Grodevant's during a period of 3 or 4 months after birth of child until time she saw Minnie first; would sometimes (not often) dine there in evening; played cards there in evening (R. 2807). Witness now says she first saw Minnie a month prior to the time she noticed the evidence of pregnancy in May or June, 1885 (R. 2808–09); saw Minnie working in kitchen about two months later; condition of pregnancy had disappeared (witness was in dining room); from first time she saw Minnie witness would see Minnie almost every day she was at

Grodevants (R. 2811); *first* time she saw Minnie at Grodevants was in May or June (R. 2812); the evidence of pregnancy which she observed was pronounced (R. 2813).

Lee Bond was first to talk to witness about this matter; in summer of 1915; Mr. Long was with Mr. Bond; Long talked to her; a man who said he was a lawyer also talked with her in Cincinnati; recently talked to Bond and Judge Stuart; now staying at hotel where Mrs. Bond is—"around there together." (R. 2815–16.)

At time witness remarked to Mrs. Grodevant that Minnie was in pregnant condition, Mrs. Grodevant expressed no surprise; said she was afraid she (Minnie) was. (R. 2816.)

Witness now says the first time she saw Minnie might have been *two* months before she noticed pregnancy. It was before witness's child was born that Mrs. Grodevant told her she was going to have an Indian girl work for her. (R. 2819.) In March or April she first saw Minnie; last and only time she saw Minnie after she had seen her in pregnant condition. Mr. Bond and witness's son married sisters. (R. 2821.) Associates seeing Minnie with death of her own child because that year was memorable to her; Mrs. Grodevant and she had been warm friends, but just before death of her child in August Mrs. Grodevant and she had a difference and "I missed her very much and she didn't come to my house." Mrs. Grodevant and witness patched up their difference prior to Grodevants leaving fort in fall of 1889 or 1890. (R. 2824–25.)

CORNELIA HYDE COLLINS:

Daughter of Geo. H. Hyde; resided in Leavenworth during years 1884 and 1885; was 14 years old in '84; knew Minnie Atkins; she worked for Hydes a few months; Minnie left suddenly; remembers seeing "this soldier" two or three times around back door; thought he came to see Minnie; saw Minnie once after she left their employ; witness was driving down Choctaw Street, Leavenworth, and saw Minnie on that street between 3d and 4th; she was without a hat "apparently as if she were staying about there"; Choctaw St. was a disreputable part of town; Minnie was standing in front of a disreputable place; this about two months after Minnie left their employ; witness shocked at her condition—pregnant; concluded it must have happened while Minnie at their house; never saw Minnie again; heard of her having one baby. (R. 2826–30.)

Cross-examination:

Mr. Long came to witness's house once and told her of Atkins case and of the child being born at a negro's house, between the time Minnie worked for them and the time she worked at Grodevants at the Fort; witness had told him that she was unable at that time to state definitely just how long it was after Minnie left their house until she saw in pregnant condition, and witness wrote Mr. Allen (for Government) to the same effect; Mr. Long explained that Minnie's winning valuable land involved was dependent upon proving that she had child at negro's house between time she

worked for witness's parents and Grodevants. (R. 2830–31.)

MRS. JOHN D. SHEEHAN:

Lived at Fort Leavenworth when a girl; knew Mrs. Grodevant, she lived next door to witness; assisted Mrs. Grodevant in household duties; witness then about 16 years old; Mrs. Grodevant didn't employ help regularly; a parole man from the prison would help around house; thinks it was about 1884 or '85 that she assisted Mrs. Grodevant; assisted her about three weeks at this time; never knew of a girl named Minnie Atkins working for Mrs. Grodevant. (R. 2835–37.)

DAVID ATCHISON:

Was engaged in wood, coal, and ice business in Leavenworth in 1880 at 4th and Seneca Streets, a block and a half west of Crilly's barn; knew girl named Indian Minnie; first saw her in 1885; she used to come to order wood and coal; had a baby with her; ordered wood and coal for Mrs. Letcher; Mrs. Letcher lived on Cherokee Street, between 2d and 3d, then moved to Seneca between 2d and 3d; recalls the year he saw Minnie as 1885 because it was year before real estate boom in Leavenworth. In going to ice house from wood yard, went by Granny Letcher's house and saw Minnie in the yard a few times. (R. 2842–45.)

Cross-examination.

Witness is father-in-law of Lee Bond; son of witness Mrs. Ripley married one of witness's daughters.

Lee Bond asked witness if he knew Indian Minnie; witness said, "No; who is Indian Minnie?" Bond replied, "You ought to know Indian Minnie; she lived in your neighborhood." Witness said he would study up and then began to think about this woman coming to get coal with baby in her arms. (R. 2845.)

Minnie began buying wood from witness during winter of 1885–86. (R. 2847.) Minnie later went out to Fort to work for Grodevant when child was less than a year old (R. 2850); saw the child in Letcher's yard when it was able to walk; there were other children there—white (R. 2855); saw child when it was about 7 years old (R. 2856–57). Attention of witness called to testimony given by him preceding spring wherein he stated that he believed he saw Minnie in 1884; he now says between '83 and '86 and also that she didn't have the baby in 1884. (R. 2858–59.)

L. B. Bell:

Went to Leavenworth to live in 1884; knew Indian woman there called Indian Minnie who lived at Granny Letcher's on Seneca Street; witness was hack driving and drove Minnie to Fort on one occasion; there was an Indian boy at Granny's—two years old when witness first saw him—called Commodore, also Tommy Atkins; must have been 6 or 7 years old when witness last saw him; never saw Minnie with this boy. (R. 2859–61.)

Cross-examination.

First saw Minnie in winter of '84–'85; never saw her after he hauled her to Fort; saw the boy two

years afterward; never saw Minnie at Granny Letcher's; doesn't know anything of her having any boy—the boy that played around there was called Indian Minnie's boy. (R. 2863.) Pomp Graham first talked to him about case (R. 2864); drove Minnie to Fort in spring of '84 (R. 2865); doesn't know any of the people who lived at Granny Letcher's; doesn't recall seeing Minnie until he went to hack driving in January, 1885 (R. 2867).

MRS. LUCINDA R. RILEY:

Witness born and raised at 326 Choctaw St., Leavenworth; her mother owned that property; moved from there in the spring of 1885; Lily White moved there immediately after [illegible]y moved out; leased property from witness's mother. (R. 2871.)

Cross-examination:

Thinks Lily White came there from place on Seneca Street; Lily lived there (Choctaw Street) about a year, possibly longer (R. 2872); witness moved back to Choctaw St. house in May, 1888—house had been vacated about three months before; thinks another party had lived there after Lilly White moved out (R. 2873); Lily White's hurry to get into house was on account of action of city council requiring her to vacate her Seneca St. place (R. 2875).

MRS. JOHN WELCH:

Father worked at Crilly's; witness carried his meals; saw Banks boy, two other boys, and Tommy Atkins around there; Tommy was living in the Feth house when witness moved there; Tommy was 7 or

8 years old then; recalls that mother and she stopped a quarrel between older boys and Tommy; knew of Tommy being there with Granny Letcher until about 1894. (R. 2877–80.)

Cross-examination:

Tommy was small—about 2 years old—when witness first learned his name; Granny told witness this boy was a child of Indian Minnie (R. 2882); Mr. Crilly brought Long to witness's place about 2 or 3 years ago; Long asked her if she knew Tommy Atkins and Granny Letcher (R. 2884); witness born in 1876; was about six years old when she first saw Tommy around Crilly's (R. 2890).

PHILIP TUCHER:

Worked for Crilly & Cranston; Van Tyle & Geo. Waller; Crilly & Cranston were on Seneca St. between 2d and 3d, north side of street; Van Tyle's was at 3d and Seneca; worked around that block 18 years; knew Granny Letcher; she lived on Seneca between 2d and 3d—right across from Crilly's barn; knew Indian girl named Indian Minnie who lived with Granny, saw her for a year or more there; saw her in pregnant condition; saw her nursing baby afterwards on porch at Granny's; saw her carrying baby in her arms; saw baby after he grew up and got to playing around in yard—called him Tommy, nicknamed him Commodore; didn't come around the barn; was about 4 or 5½ years old then (about 1890); doesn't know positively what year Minnie had this boy. (R. 2891–93.)

Cross-examination:

About five years before fire that destroyed Crilly's barn witness commenced working on Seneca Street; Granny Letcher not on that street then; Dotter living in the house Granny later occupied; several families moved in and out after Dotter before Granny lived there (R. 2895); didn't see Indian woman before Granny moved into the house; Jim Mayo was about 30 years old when Granny moved into house; Sam Nash, about 18 or 19 (R. 2896–97); Tommy only child witness paid any attention to; Indian Minnie stayed with Granny Letcher until Tommy was about 3 years old (R. 2897); is positive Granny was living in Seneca Street house when Minnie was pregnant (R. 2899).

Crilly first mentioned case to witness winter before last. Came with Hanford to Kansas City to see witness (R. 2902); Crilly asked if he knew Indian Minnie and if he knew her when she had the child; doesn't remember Lilly White (R. 2903).

Recalled.

Saw Indian Tommy around Ella Abbott's place over Abel's drug store, 3d and Cherokee Sts.; knew boy until he was about 3 or 4 years old. (R. 2995–96.)

MRS. INA MASSIE MCCORMICK:

Wife of Dr. John A. McCormick; husband told her of attending a childbirth of a young Indian girl in Leavenworth in 1865 (probably means 1885) (R. 2905); saw this Indian girl once when she came with a woman named Letcher to see Dr. McCormick (R. 2906).

Cross-examination:

Dr. retired from active practice in early '80's—'83 or '84—but he had a great many families that he cared for and was their physician after that; Dr. asked witness if she wanted to see the Indian girl; simply went and looked at her (R. 2908); knew this colored woman with Indian girl to be a midwife; can't describe colored woman; can't describe Indian girl—just an ordinary Indian girl; has no judgment as to what her age was (R. 2910–11); husband asked her if she wanted to come in and see the Indian girl who had had the baby (R. 2912).

ALEXANDER FORD:

Came to Leavenworth in 1875 or '76; worked for Dave Atchison in 1885; was sort of foreman for him in hauling of wood from Missouri; some days would stay around wood yard working or delivering; knew an Indian woman (Indian Minnie); saw her around wood yard; first time witness saw her she came for baskets of chips "and things," from Mrs. Letchers; had a "papoose baby" with her; saw her several times; saw her once by the house; understood child's name was Tommy. (R. 2913–15.)

Cross-examination:

Heard child spoken of as Tommy at Letcher's (R. 2916); that was about 1885; talked to Hanford and Long about matter (R. 2917); child was about five or six months old when witness first saw him (never saw him but once; R. 2918); Rube Smith

came to his house and asked him to come to Leavenworth to testify; "they" gave him a couple of dollars one time and $5 another time—received $10 or $12 all together; talked to Long, Hanford, and Bond (R. 2919); saw Indian woman at Letcher's during a period of two or three months; last time witness saw child he was 7 or 8 months old (R. 2920); has no way of fixing time he saw this Indian woman at wood yard except that it was in the eighties (R. 2922); Granny Letcher lived on Seneca St. between 2d and 3d at that time in the *frame* house (R. 2023); child looked to witness to be full-blood Indian (R. 2924).

WILLIAM D. FORD:

Lived in Leavenworth in 1885; worked at times for Dave Atchison at wood yard, 4th and Seneca Streets; knew Indian woman called Indian Minnie "around there"; every time she came around there she carried a baby in her arms; heard the baby called papoose; thinks this was in 1885; they lived at Letcher's on Seneca between 2d and 3d; never saw Indian Minnie at Letcher's but did see the baby. (R. 2926–27.)

Cross-examination:

Saw baby in 1895, was then 10 or 11 years old; witness was told it was the same boy; was at the wood yard only one summer—the summer he saw Indian Minnie before he went away to Missouri. (R. 2928–30.)

(Witness seems confused as to his dates; states it was summer, 1883, then 1885. R. 2930–31.)

Witness talked with Hanford and Rube Smith about the case (R. 2932–34); Mr. Bond gave him $10 when witness came over to testify; received $6 since that; Mr. Bond is to pay his board. (R. 2935.)

JOHN F. RODERICK:

Was a member of firm that ran a bus line from Leavenworth to the fort between years 1879–1885; knew Indian Minnie; first saw her on corner 5th and Shawnee Streets waiting for a bus to the fort; remembers hauling her time and again, back and forth between town and fort; on one occasion about last of June or first of July went in Mollie Peters's at 3d and Seneca (Seneca Hotel); Mollie was a fortune teller and also waited on women; Mollie told him she had just brought a baby into the world and for witness to go over and see it; witness went over and saw baby lying by the side of Indian Minnie; about 3 or 4 weeks later went there again and asked about baby, and was asked to get baby, and did so, and took it over to Aunt Mollie's; baby was in house across from Seneca House; colored people lived there. (R. 2937–41.)

Minnie was at bus stand when he first saw her; didn't see her go in bus. "How I knew this Indian Minnie; I recognized her; they told me afterwards who she was"; didn't discover that she was in family way then, but *he did* discover it; saw her 3 or 4 times a week on an average (R. 2943). It was last of October or first of November, 1884, when he first saw her; witness drove busses mostly at night; saw Minnie riding in busses; she rode in the bus he was

driving (R. 2944); first time he saw Minnie at Molly Peters's was in 1882 (R. 2945); the baby was 3 or 4 days old when he first saw it (R. 2947); child was 10 or 12 days old when he took it from house across from old Seneca House to Molly Peters's; first saw Minnie on street with baby in her arms about 8th or 10th of July, 1885 (R. 2951); after he dissolved partnership with Crilly & Cranston he went to Fort Riley and stayed until November, 1885, then began running bus again; never saw Indian woman again until two years ago (R. 2953); saw this Indian woman several times with Mollie Peters; she was on her way to Lange's drug store when witness saw her with baby (R. 2954); called the baby Tommy Atkins, also called papoose; admits that papoose is all he ever heard child called. [Note: In previous testimony at Leavenworth he stated that when he took child to Aunt Mollie's it was 1½ months old. (R. 2956.)] Crilly talked with him about case, also Long (R. 2958); denies that at Leavenworth he *did not* testify that when Long first talked to him he could not remember anything about it (R. 2959).

A. L. JOHNSON:

Physician and surgeon; lived in Leavenworth in the eighties; remembers attending Mrs. Mattie Edwards (now Cobb) at childbirth in April, 1885, at old Seneca House on Seneca St.; second day after Mrs. Edwards' confinement he called to see her; a woman came in and after she went out Mrs. Edwards said to witness that he might have a case there; didn't learn woman's name; saw that woman about

two months ago at his daughter's house; she came with Mr. Long; Long introduced her as Mrs. Folk; identified her as same woman he had seen at Mrs. Edwards's; knew Granny Letcher; was called there to see Indian baby boy in February, 1886; baby was about six months old; it was dark complexioned; didn't look like a nigger; treated baby again in June, 1886, at same place; it was about a year old. (R. 2961–65.)

Cross-examination:

Fixes time of incident regarding Mrs. Edwards' baby by fact that he was then living on the "Hastian place" just out of city limits; kept no record of obstetrical cases until 1889; can not tell any other obstetrical cases he attended that year; received letter from Mr. Bond asking if he had attended Mrs. Edwards in April, 1885; wrote Bond he had no record; was asked to go to Federal Building at San Francisco; young man there asked him about confinement of Mrs. Edwards and if he was sure it was 1884 or 1885; witness said couldn't swear to it; witness asked his daughter, who fixed it with reference to time witness and wife made trip to Chicago (R. 2966–67); letter written by witness to this man (Rathburn) March 22/16; (Def. Ex. B–2, R. 4937); states birth was in April, 1884; the statements then made were facts as he remembered them; after that letter Mr. Long came with Mrs. Folk to see him (R. 2968); another doctor assisted at confinement of Mrs. Edwards—was a stranger to witness, can not tell his name; Granny

Letcher lived across street from Mrs. Edwards at this time (R. 2969); at the time he saw this woman at Mrs. Edwards' he didn't notice that she was pregnant; she was in room about five minutes; recalled the face when he saw it 32 years later (R. 2972).

[See in connection with this testimony Def. Ex. B–3, B–4, B–5, B–6, R. 4938–40.]

Regarding Ex. B–3, Dr. Johnson says in answering that letter he made no investigation to determine whether date stated in letter was true; just took it for granted date given in Bond's letter was correct (R. 2990–91). Came to Muskogee to testify at Mr. Long's request; agreed to come for expenses and time; received check for $250 from Long (R. 2991–92). Judge Stuart (counsel for defendant) told witness not to talk to anyone (R. 2994).

C. R. CARPENTER:

Physician; practiced in Leavenworth 30 years; remembers being requested in 1886 by man named Peterkin to attend woman in confinement in Leavenworth on North H. Street (R. 2997); found woman in labor; a physician can determine whether woman in labor has had a child before; details changes which take place in pregnant woman during labor (R. 2998); the substance of that is that membrane of organ is ruptured and while these tears heal the edges never come together, thus leaving a notch or scar. Made an examination of this woman to see if this was first child and found evidences of previous labors; notches are evidence of a full birth (R. 2999).

Cross-examination:

Understands house where confinement took place was Wood's house (R. 3000); recollection is that it was in daytime that he reached house (R. 3001); recollection child born during night; light (lamp) was "kinder dim"; examination to determine evidences of previous labor is important because first labor is always hardest (R. 3003); in all labors there are lacerations of the womb but not always lacerations of perineum; doesn't think that there were any lacerations of the perineum—it was perfectly normal; might have been some lacerations of perineum—wouldn't be sure (R. 3004).

Will not state that after labor has begun one can by digital examination tell positively whether woman has previously given birth to a child, but says one can in a majority of cases. (R. 3010.)

First man who talked to witness about the case was a detective; never did know his name; Mr. Anderson, a lawyer of Los Angeles, also talked with him; told Mr. Anderson that he couldn't remember whether that was her first child and that he would try to get his records and ascertain. Witness was very hazy about matter, and at that time only thing he could remember was Peterkin coming for him; wrote for records, but they were gone. (R. 3014–15.) Upon testing his memory he began to recollect that during this examination of this woman he had found evidences of previous labor. (R. 3015–16.)

Attention of witness directed to deposition taken before examiner in California wherein he stated that he had told Messrs. Allen and Cook when they had talked to him that his best recollection was that it was the first child born to her; denies that he stated on that occasion that it would be impossible for him to testify with any degree of certainty as to whether it was her first child by reason of the large number of childbirths occurring during his practice attended by him. (R. 3016–17.) Later, says that he presumes he gave the answer to the questions which the deposition shows. Admits stating on deposition that his recollection was that this was first child; that his records would probably show, but that he didn't always note that point in his records; never received any of the records sent for; had not had his memory refreshed by any record, statement, etc. (R. 3017.)

(See also R. 3020-21 for additional questions and answers of like tenor relative former testimony.)

Witness is asked about correspondence between Mr. Allen and himself relative his testimony. (R. 3022-23.) Govt. Ex. 4, 5, 6, 7, 8, 9. (R. 4852–56.)

MILTON WEBSTER:

Knew Indian Minnie at Granny Letcher's in 1885 or 1886; saw her in a family way—far gone on May 30, 1885; she had a baby boy—was about 4 or 5 weeks old when witness first saw it—this not long after he had last seen her when pregnant; Minnie told him it was her child; last time saw child it was about 11 or 12 months old; witness left Leavenworth in 1887; never saw Minnie or child thereafter. (R. 3030–32.)

Cross-examination:

Last time saw child was in fall of 1887. (R. 3032.)

ADOLPH LANGE:

Was in drug business in Leavenworth in 1884 and 1885 on 4th and Shawnee St.; lived over store; knew Indian Minnie, saw her frequently; knew Mollie Peters as a fortune teller; saw Indian Minnie with her; they came to his store. Witness made trip to Saxony in 1884; returned from Europe in September, 1884; saw Indian Minnie after that time in pregnant condition; it was year following, in '85; it was warm weather; remembers selling Minnie a peculiar shaped pocketbook at the time. (R. 3047–50.)

Cross-examination:

His understanding that Minnie stayed with Mollie Peters; was on ship leaving for Europe June 18, 1884; knew Indian Minnie before he went to Europe; saw her around Leavenworth before July 11, 1884; she came to his store before that time, sometimes on errands for Molly Peters; first saw her the year of 1884—before he went to Europe (R. 3052-53). After his return, in September, 1884, Minnie would come to his store once or twice a week (R. 3054).

A. W. HOPKINS:

Lived in Leavenworth 40 years; grand secretary of secret order of Knights and Daughters of Tabor—a beneficial order of colored people; association met in grand lodge; meeting in Memphis in 1884; acted as outside sentinel there—Indian woman, mixed breed, was inside sentinel; she asked witness if he

knew of young woman in Leavenworth named Minnie Atkins; returned to Leavenworth in September or October, made some inquiries, but didn't find Minnie at that time; finally in spring located her at Granny Letcher's; saw her in summer and she had a baby in her arms; walked up to her and looked at baby—Minnie said it was hers. (R. 3067–70.)

Cross-examination:

Granny Letcher then living in Seneca Street, right across from Crilly's barn (R. 3075); denies having talked with Sadie James and told her that he didn't know Minnie or an Indian boy (R. 3079). After depositions were taken in Leavenworth, some lawyer asked witness if he understood, or did Dennis Jones and Rube Smith understand, that he (witness) was father of Minnie's child, and witness told them he didn't know what they understood (R. 3081).

W. P. GEMPEL:

Bookkeeper at Leavenworth Water Co. Identifies a contract for water service at 215 Cherokee St. dated Oct. 23/85 for saloon of Max Harris; also plumber's return Oct. 22/85 certifying that fixtures have been installed. (R. 3087–89.)

M. A. HARRIS:

Formerly in saloon business at 215 Cherokee St., Leavenworth; remembers having water installed there; doesn't remember the date he moved in; it was in 1885. (R. 3096-97.)

LIZZIE KAZEY:

Laundress; knew Granny Letcher; went to see her occasionally; knew her when Granny lived on

Cherokee St. and on Seneca St. between 2d and 3d; saw Indian girl called Minnie Atkins at Granny's twice; she had a child about 2 years old, named Tommy Atkins. (R. 3098-99.)

Cross-examination:

Saw child on both visits, which were about two weeks apart; doesn't know date or year it was; married in May, 1882; it was after her marriage when she saw Minnie and Tommy, perhaps it was two years after her marriage (R. 3099–3100); went to Granny for advice regarding housekeeping; when first married lived on Miami St. for a year, then to Osage St. for five years; was probably the first year she moved to Osage St. that she went to see Granny Letcher and when she saw Tommy, who was then, witness says, two years old (R. 3102–03). [Note.—This would make Tommy two years old in 1884.]

Sadie James was at witness's house in December, 1914; asked her if she knew Mary Letcher and if she remembered boys Mrs. Letcher raised; told Sadie she remembered Walter and Sammy Nash. (R. 3103–04.)

Q. Now, did you tell Sadie James, Lizzie, that they wanted you to swear that you knew Indian Minnie and Tommy and you had agreed to do it, but when the time came God wouldn't let you swear that lie; that you were 51 years old and a Christian?

A. I never told her anyone was after me because I didn't know what she wanted with me at that time.

Q. Did you tell her this other?

A. No, sir; I never told her nothing like that. Some gentleman was with her; I don't know

who it was—but I never told her that, though. I didn't tell her somebody was trying to get me to swear, because I didn't know what it was when she came to my house.

Q. Did you tell her anything about God wouldn't let you swear that lie?

A. If I did, Judge, I done forgotten it; I don't remember anything like that. (R. 3104.)

Some one came and got her when they had court at Leavenworth. Pomp Graham told her to be ready; that government would send her to Muskogee. Dennis Jones furnished her ticket; she came down to Muskogee; Dennis Jones, Rube Smith, and others came down on same train. (R. 3106.) Upon arrival she went with Jones; doesn't know who is to pay her for coming down; didn't ask; thinks Government has her here. (R. 3107.)

FRANK HEIS:

Lived in Leavenworth since 1868; in spring of 1885 endeavored to purchase certain lots on Choctaw St. owned by Mrs. Schiller; she asked too much money; she moved out that spring and Lilly White moved in. It was early in spring when Mrs. Schiller moved out and Lilly White moved in. (R. 3110–11.)

Cross-examination:

Witness left the adjoining property in summer of 1886; Lilly White was living in Schiller property then (R. 3111); didn't know about petition to get Lilly White off Seneca St. (R. 3115.)

PATRICK DE LANEY:

Was on the police force of Leavenworth beginning 1894; then in fire department beginning 1899; was

fire chief for 3 years; knew of Granny Letcher; she lived on Seneca, between 2d and 3d; knew a boy called Tommy Atkins, lived with Granny; arrested him in 1896 or 1897; appeared to be about 12 years old; never knew Indian woman named Indian Minnie. (R. 3118–19.)

W. J. COWLING:

Knew Lilly White; worked for Burdett & Heis in 1885, on Choctaw and on Cherokee streets; knew Schiller house next door to stoneyard; Lilly White moved there about April 1885, not later than May. (R. 3131–32.)

JAMES M. ALLEN:

Has been connected with Rock Island Railroad in various capacities since 1875; knew Indian Minnie during 1884, 1885, in Leavenworth; saw her several times, particularly at Granny Letcher's on Seneca Street; saw her there with baby 3 or 4 months old in her arms; it was in 1884 or 1885; it may have been earlier than that but sometime during that period; changed service with Rock Island in 1885 and wasn't on streets as before. (R. 3139–41.)

Cross examination:

Saw Minnie several times during latter part of 1884 and early part of 1885 at Granny's—always went there in daytime (in evenings, about 5 p. m., R. 3147); went there to see a man to sell him transportation (R. 3150); thinks he saw Minnie at fort, and that she was working at Grodevants; never saw her at Grodevants (R. 3154); Grodevant told him

Indian Minnie was working for him (R. 3157); doesn't remember whether this was before or after he saw Minnie at Letcher's; was talking with Grodevant and witness said, "There goes Indian Minnie"; won't say this was before or after he saw her at Letcher's. "Everybody in town knew Indian Minnie" (R. 3159).

MATTIE COBB:

Lived in the old Seneca House on Seneca St., in Leavenworth, in 1885; had a child born to her April 20, 1885, in that house, Grace Edwards; Indian Minnie waited on her four days just before baby was born; Indian Minnie was pregnant then; she had a child born at Granny Letcher's last day of May or 1st day of June following birth of witness's child; saw it many times; had it in her own house and washed its hands and face; it played with witness's children; baby was called Commodore; saw Minnie around there 5 or 6 months, then she disappeared; Minnie went back and forth to fort. (R. 3163–64.)

Cross-examination:

Minnie was not able to do very much of the work when at witness's house those 4 days; witness saw child when four days old in bed with Minnie at Granny Letcher's; witness had baby "around the house" for a year or two (R. 3165); witness would run over to Letcher's every once in a while to see baby and Granny would bring it over to witness's house; saw it for the next four years; couldn't say child was full-blood Indian, it favored the Indians (R. 3166).

An effort was made in cross-examination by Carter interests to secure admission from witness that she had stated that she had noticed a birthmark on Tommy's shoulder and also that he had been taken out to the country by an old vegetable man named Carter. Witness would not make such admission (R. 3169–71); talked to Long, Page, Bell, and Bond about case (R. 3172–73).

Cross-examination:

One Bob Martin endeavored to get her to testify that the Indian child (Tommy) had a white spot beneath its shoulder; Martin was associated with Bell and Blackney in case (R. 3184; see also R. 3192–93). Can not recall date of her first marriage nor year her first child was born (R. 3204).

Saw Minnie daily for 4 months that she saw her; she was working out at the fort and went back and forth; slept at Mrs. Letcher's; went to fort in the daytime (R. 3225); Minnie hung around the fortune teller's a great deal (R. 3228); Tommy was about 5 years old when she last saw him (R. 3229); Granny Letcher moved into the Seneca St. house in the fall of 1884; it was cool weather (R. 3232); George Crilly was first person who mentioned Minnie's name to her since 1885, about 3 months ago (R. 3234).

THERESA SWOBODA:

Employed by Leavenworth Times; identifies issue that paper for May 12, 1886, containing account of storm which passed over Kansas City and Leavenworth, also issue of May 13, 1886, containing further

account of destruction caused by storm. Offered these articles in evidence. (R. 3286–88.)

Cross-examination:

Identifies Leavenworth Times of May 1, 1885, containing account storm that occurred on Tuesday before Friday, May 1, 1885; also issue of May 21, 1885, having article relative departure of 20th U. S. Inf. from Ft. Leavenworth to Ft. Assinniboine. (R. 3290–91.) Witness doesn't remember hearing of this storm of 1886. (R. 3291).

THOMAS HIGGINS:

Born in Leavenworth 1881; worked for father there for 3 years from time about twelve years old, then worked for McNally driving delivery wagon; knew Tommy Atkins to be around alleys and on Seneca and 3d Streets; Tommy about 11 or 12 years old; sometimes rode on back of wagon witness drove; never remembers seeing him after 1900 (first saw him when he first worked for McNally—worked for McNally 1897–1900); Tommy lived at Granny Letcher's on Seneca Street; looked like an Indian. (R. 3292–94.)

Cross-examination:

Last saw Tommy in 1900 (R. 3296); Pomp Graham first talked to him about case; asked him to testify; promised him transportation, wages and expenses; also furnish transportation for witness' wife. (R. 3300–01.)

ALVA ADAMS:

Knew Tommy Atkins, played with him around alleys and lumberyards near Granny Letcher's on

Seneca Street, between 2d and 3d Streets; last time saw Tommy was in 1897 or '98; Tommy would be captain of one side when boys played war; Tommy was also called Indian Tommy. (R. 3302–03.)

Cross-examination:

Witness 10 or 12 when he first saw Tommy (R. 3306); Tommy lived at Granny Letcher's (R. 3308). Pomp Graham and Higgins (witness's brother-in-law) came to him about case—first he had heard of it; Pomp asked him to be witness. (R. 3309.) Witness spent 60 days in jail in 1898; Tommy living at Letcher's when witness went to jail; didn't see him after he left jail (R. 3310); remembers Sam Nash who was about 6 or 7 years older than witness (R. 3311); witness thinks Tommy was older than he a year or so (R. 3312).

Henry Carter stands up and witness declares he is not the boy he knew as Tommy Atkins. (R. 3318).

ELOF A. CRILLY:

As a boy played in neighborhood of his father's barn at 220–222 Seneca Street, Leavenworth; lived in old Seneca House, and after that was burned, in the new Seneca House built on same site; knew Granny Letcher who lived on other side of street from father's barn; played around lumber yard adjoining Granny's and back of Granny's with Tommy, Walter Banks, and others; Tommy and Walter lived at Granny's; Granny would often give the boys playing around there cookies and things like that; Tommy about 6 or 7 years old when witness first knew him,

about 1892; saw him for about two years, never saw him since. (R. 3319–23.)

Cross-examination:

Must have become acquainted with Tommy and Walter soon after Granny moved onto Seneca Street (R. 3324); Tommy looked like a mulatto; Tommy was the only name witness knew him by; saw Tommy but about 1½ years (R. 3325); witness was 11 or 12 when he played with Tommy, who then was 6 or 7 years old (R. 3329). Mr. Long came to see witness after witness's father had talked to him about case; talked to his father and to Mr. Long about three times about case; also talked to Mr. Hanford (R. 3330); never heard what happened to Tommy; witness's father mentioned fact that "they" were trying to put some one up as Tommy; also told him that he felt that Henry Carter was Tommy Atkins because Henry remembered incident of pointing to pear trees and being told pears would drop off if he pointed to them (R. 3330–31).

George Crilly:

Came to Leavenworth in June, 1870; went into livery business for himself in 1878; been in that business continuously since then. One time member of Crilly & Cranston, formed in 1880, and continued until 1892; also member firm Roderick, Crilly & Cranston, formed in connection with contract for bus and freight service to Ft. Leavenworth; this was dissolved some time in 1885 or beginning of 1886, won't be positive about date.

Stable located in 80's at 220–224 Seneca Street; lived at old Seneca House, adjoining the stable, between 2d and 3d Streets; knew Granny Letcher from 1877; she died in 1900, about 8th of July or August; she lived across the street from stable in Dotter property; Lily White succeeded the Dotters and Granny succeeded Lily; Granny moved in about middle of 1885; knew Indian Minnie; she was about 22–25 years old; had seen her around on streets time and time again, first one place and then another; that was a good while before she came to Granny's; first knew her *there* in latter part of 1885; would see her around Granny's often but she wasn't there constantly—would be there two or three days, then would disappear and witness wouldn't see her for a week or ten days; then she would show up, and again go away for same period or perhaps two or three weeks; saw her around Leavenworth altogether 2½ or 3 years.

Saw Minnie not later than July or August, '85; must have been latter part of year, with child 5 or 6 months old, on back porch of house occupied by Granny, across the street; saw her probably half dozen different times with child—he was called Tommy. Saw him around there continuously after that until Tommy was 6 or 7 years old. Witness called him Commodore; recalls incident at Van Tyle's stable at 3d and Seneca Streets, when Tommy picked up Van Tyle's pipe and put it in his mouth; this last time he recalls seeing him—*might* have seen him

thereafter but can't say; was burned out in 1890; few weeks later started rebuilding stable and moved back to that location.

Fixes date of seeing Tommy in arms of Indian Minnie by fact that his wife was away and had been for some little time; she left in 1885; had been away about a year when she died in September, 1886. (R. 3332–38.)

Cross-examination:

Met Long early in this case; he first mentioned name Atkins to witness who knew Minnie only as Minnie; has been employed by Long to drive him around and also some of his witnesses. (R. 3339–40.)

Witness was asked about conversation with Mr. Allen (gov't counsel) as to when he saw Minnie with baby with reference to time his wife left him (R. 3341), says that he doesn't think he stated that he saw this boy with Minnie before his wife left him, "that is along about the time." Lilly White moved out of this house in summer of 1885, remembers that from "petition papers" he found; won't be positive that his wife left him before Lilly moved out (R. 3342); it was about that time (R. 3343); thinks Lilly left in June or July, 1885; Granny moved there in fall of '85 (R. 3343).

Witness has been hired to search for witnesses; thinks now Lilly White and Granny Letcher were in that house for a while at the same time (R. 3344); saw Minnie around the streets with Ida Foster long before she was at Granny's (R. 3346).

Doesn't remember petition circulated to have Lilly White removed from 217 Seneca St.; never saw petition until Gov't Ex. 51 is exhibited to him (R. 3347). Is asked about signers of the petition and states he knows a great many of them; they lived in that locality (R. 3347–50); Lilly White left that house suddenly (R. 3350).

Never saw Minnie in family way (R. 3354); saw her at Letcher's 2 or 3 years after child born (R. 3356); considered Tommy part negro, part Indian; Minnie was woman whose character was questioned (R. 3358).

Long sent witness money to pay expenses of certain other witnesses in coming to testify (R. 3360). Relates call upon him in November, 1914, of Henry Carter and how he endeavored to ascertain by tests if Carter was the same boy he knew as Commodore; was not satisfied that he was, but told Long he wouldn't be surprised if Carter didn't prove to be Commodore (R. 3362–63).

Witness's boy that played with Tommy was about same age as latter, perhaps a year younger; he was four years old when witness's wife left him (R. 3366).

Witness admits talking to Clarence Turner and saying that he could lay his hands on the Tommy involved and that he thought Henry Carter might prove to be Tommy (R. 3368). Asked if he didn't state in 1916, after receivership hearing, to R. C. Martin that in his judgment Carter was the boy "Commodore"; witness denies the positive statement but states he said that Carter *might prove* to be the boy (R. 3368–69.)

DENNIS JONES:

Lawyer, admitted to Kansas bar in 1892; from 1880 to 1885, '86, '87, was porter at Continental Hotel part of the time, part of time on police force and part of time barbering; went on force as special policeman in 1884 to collect road tax (in summer); was on again in 1885; was *regularly a special policeman* in '85; knew Granny Letcher, knew her up to time she died; knew her when she lived at 215 Cherokee St.; next lived on Seneca St. between 2d and 3d; Jim, Sam Nash and Walter Banks, and a little boy called Arch (one-eyed boy) were members of her family; Arch stayed there occasionally, also Tommy, son of Indian Minnie; knew Minnie; first saw her about winter of '84 at Letcher's on Cherokee St.; didn't know her then, but knew her when she was with Granny on Seneca St. in spring of '85; saw Minnie in a condition not normal in May '85 at Granny's; knew a child there which Minnie said was hers; it was several months old when he first saw it; child was 12, or 13, or 14 years old when he last saw it; would see him at times; kept track of him enough to know it was same boy; knew Minnie to be around Granny's or in Leavenworth from '84 to '86 or '87; doesn't know just when she left or where she went; she disappeared; child was then about 1½ years old; has seen Minnie since I have been "here"; states positively it is the same woman who is now Mrs. Folk; has known Sadie James for 33 or 34 years; remembers her coming to his office to see him about Indian Minnie or Indian

Tommy; first time was in spring of 1914; stated she was looking for Indian Minnie who stayed at Letcher's; asked if witness knew Minnie; witness stated he believed he did, and that she had a "kid" there; told her Minnie was gone and he didn't think she could find trace of her around there; told her to see number of men from whom she might find out where she was. Not many days after Sadie came with Betty Mann; wanted more information and names of some old colored women; he named them; witness did not tell Sadie that he didn't know Minnie; didn't tell witness she wanted to hire him to help manufacture a Thomas Atkins; never said to her that he could get bankers and doctors and lawyers to swear hell was an ice box; it was on Friday and she wanted to come again on Saturday, but he told her that was motion day in court and that she better come some other time; the next week she came with two white men; Swift was one. Sadie had a paper she wanted to execute—a deed transferring land in Oklahoma; heading was State of Missouri, County of Jackson; witness told her she would have to have paper fixed up in Missouri; Sadie said it wasn't her signature; wanted him to sign paper; gave her name of Mr. Calloway, a notary in Kansas City. Pretty sure she didn't say anything about Tommy and Minnie Atkins.

Betty and Sadie came back to his office and Sadie wanted witness to go to Kansas City to meet a Mr. Buell or Bartlett; told her he didn't have time; thought something was wrong but didn't let her

know he had any suspicions; she never came to his office and told him that she had met Bartlett, that he had a lot of money and that she wanted him to go ahead and help her manufacture a Thomas Atkins. Received a telegram from Mr. Long at Tulsa, Okla., asking him to come there (this after he had talked with Sadie); went to work for Gypsy Oil Co. on March 4, 1914; went to work for them before he got in touch with Mr. Long; a man by name of Adair was the next one to come to see him about Indian Minnie matter after Sadie's first visits; this on 3d or 4th of August, 1914; witness was called to Mr. Bond's office and Adair talked to him, asked him if he knew about a boy an Indian woman had there in Leavenworth; witness told him what he knew and that he had heard of a boy answering that description living Washington, D. C. Witness heard this from a Mrs. Venerable; he was repairing one of his houses for her to go into; she had just returned from a visit to Washington and Maryland; he asked her if she knew of a boy named Tommy Atkins; was induced to ask her because it was fresh in his mind—looking for the boy; "they" (Sadie and somebody else) told him whoever found the boy and mother would be well paid for it; agreed to accompany Adair to Washington the next day.

Made a contract with Gypsy Oil Co. through Adair, who was representing it. Identifies def. Minnie Atkins' Ex. B–7 (R. 4940) as the contract signed by him; contract read into record (R. 3383); provides for payment to Jones of $10 per day and expenses

while trying to locate Thomas Atkins, and further that if Thomas is located and his identity established, Jones is to receive an additional sum of $500. (Crawley not Adair signed for Gypsy.)

Went to Washington, found a Thomas Atkins there, but was not right party; returned to Leavenworth and was relieved under this contract.

Some little time after received telegram dated Sept. 16, 1914, from Long to come to Tulsa; telegram read "Will expect you Tuesday morning Sept. 22d sure"; met Sadie James at station. Before receiving telegram some one came to him in Leavenworth, can't say whether it was Sadie James, and talked to him about working for Gem Oil Co. Denies being visited by Sadie James and being told by her that she wanted to hire him for the Gem Oil Co. and that she would bring Long to see him, but for him to insist on seeing Page before making any arrangement.

When he met Sadie at station in Tulsa she said she would show him where Mr. Long was, and witness went to his office; saw Rice and Page; entered into a contract with Page; it was an agreement to do practically what he had been doing for Gypsy (so witness says). At that time didn't know Sadie was working for the Gem Oil Co.; she never told him she was going to get him hired by Gem nor did witness ask her to.

Sadie came to his office and told him she had been in Seattle, Tacoma, and other places; wrote him three post cards while she was away; told him she

had found mother of Tommy in Seattle; did not tell witness she had framed Minnie up to claim she had a son named Tommy Atkins; witness at that time working for Gypsy Oil Co.; Sadie never had any arrangement with him whereby if boy found they would switch to Gypsy. Under contract with Gem Oil Co. witness has been paid $10 per day when there was anything to do. First time he talked with Long about employment with Gem, witness told him he was under contract with Gypsy and couldn't accept; later, when Gypsy contract expired, he thinks perhaps he wrote him and that caused Long to send telegram.

Contract between Jones and Gem Oil Co. read into record (R. 3390–91); it provides for payment to Jones of $10 per day and expenses not to exceed $5 per day (15 days being time contemplated for work); also that if Jones shall obtain satisfactory proof of death of Thomas Atkins and Gem Co. shall be successful in its litigation, Jones shall receive additional sum of $500. Contract recites that Jones represents he has valuable information relative to life, birth, and death of Thomas Atkins, and is in a position to obtain definite data thereon, and he agrees to give his time to securing that data and shall proceed to do so on his own initiative and under instructions from Co. Never at any time in conjunction with Page or Long or Sadie James or any party to this suit did witness attempt to fabricate a case; never attempted to practice any fraud. (R. 3372–94.)

Cross-examination:

Is an attorney of record for defendant Charles Page; remembers occasion of taking depositions at Leavenworth; asked if objection was not made to his presence there, states objection not made in his presence; asked if he was not then made counsel in case in order that he might remain in attendance while witnesses testified; can't tell why; doesn't know whether telegraphic communication was sent and advice returned that he had been entered as an attorney of record. (R. 3394.)

Testified as a witness in the case pending in Creek County in 1914; had not prior to that time been engaged by Sadie James nor later by Gypsy Oil Co. to look for a living Thomas Atkins (R. 3395); had not upon his own initiative looked for a Thomas Atkins previous to employment by Gypsy Oil Co.; he had made some inquiries in his own behalf because he had been told by Sadie James that if Thomas Atkins were found a reward would be paid (R. 3396).

Had some business with Sadie previously relative to property of an old soldier at the soldiers' home, who wanted to will his property to Sadie; also wanted to obtain certain papers in Odessa, Missouri, held by a bank; Sadie wanted witness to go to Odessa to seek to obtain papers; he declined but recommended another lawyer.

Denies that he suggested to Sadie that she marry the old soldier; that he got him into his office and furnished money for the marriage license and that

he paid for the marriage license (R. 3397); denies that he got the old man into his office and got a power of attorney for Sadie James. Identifies Govt. Ex. A–8, R. 4839, as power of attorney he made for Sadie, in which Sadie was authorized to attend to all business for Charles Lane (the old soldier), sign his name, etc. Witness states Lane told him to put those powers into the instrument. Admits he took acknowledgment of the power; says he didn't know anything about Sadie being married to Lane then. Told Sadie that she could go and get a white lawyer to do more down there for her than he could and gave her a letter, dated Nov. 26, 1913, to Codding & Codding, of Leavenworth, in which he stated that he had known Sadie for many years, from her girlhood days, during which time he had never heard of any wrong act or deed on her part; that her maiden name was Sadie Harris *and until her marriage to Charles Lane*, her name was Sadie Johnson and as far as he knew, she was a worthy woman.

Denies that he and Sadie wanted to get the old man's property and divide it; denies also that after power was executed he and Sadie did take charge of the property and divide it (R. 3399); denies that he tried to draw old man's pension that was paid for a year and a half after that and to take it as his; denies that Lane turned the proceeds of his pension check over to him (R. 3400). Witness denies he and Sadie operated together to find a living Thomas (R. 3401); had no agreement with Sadie (R. 3402).

Denies that he testified in October 1914 that first time he had seen Minnie was when she came to church with a negro; declares that he testified that first time he saw her was at Letcher's on Cherokee Street in '84 or '85. Admits that yesterday was first time he ever claimed to have seen her at Letcher's on Cherokee St.; says that was the first time the question was ever asked him.

Q. You found out since you testified in 1914, Dennis, that she couldn't have been living on Seneca St. when she was in a family way?

A. No, I didn't find that out. I just testified what I knew.

Q. But you were asked all about your knowledge of this woman and when you first knew her.

A. Yes, sir, I told it.

Q. And you didn't tell you saw her on Cherokee St.?

A. They asked when I knew her and I said eighty-four and eighty-five. (R. 3402.)

Witness is confronted with his testimony given in October, 1914; admits that he read it before he signed it. In it he testified that Granny Letcher's was a place where men and women resorted for immoral purposes; that he lived just about four blocks from Letcher's; that Minnie stayed at Letcher's most of the time she was pregnant and afterwards when child was toddling around and pulling to chairs; that first time he saw Minnie was at Granny's in 1884; she must have been pregnant then; that the way he found out her name was Atkins she came to

the colored church at 6th and Pottawatomie Sts. with a colored man and the other darkies wanted to know why he would bring a white woman there, and he among others began to inquire about her name (R. 3402–04). Admits that this was his testimony at that time, particularly the church incident (R. 3404).

Admits it is six and a half blocks from his house to Cherokee St. but *explains* that when he testified that he lived four blocks from Letcher's all the time he saw Minnie there he was thinking of when she lived on Seneca Street.

Remembers petition circulated to remove Lilly White (Govt. Ex. 59; R. 4912), was in police service at time; says Lilly moved out in April before petition was circulated (R. 3405; see also R. 3408).

It was after the birth of the child that he saw Minnie with colored man at the church (3406).

Denies that he stated in his office in presence of Betty Mann and Sadie James that he wanted them to see Henry Byrd, a negro at Leavenworth, and have him agree to be father of Tommy (R. 3409).

Q. Rube Smith wanted to be this child's father, didn't he?

A. I don't know what Rube wanted to do. (R. 3409.)

August 22, 1914, witness wrote Gypsy Oil Co. in which he expressed conviction that Thomas Atkins was living (R. 3412-13); on 26th got letter from Gypsy saying they didn't want him to go out again

until he got definite information; this witness considered terminated his employment.

On *22nd of September* (next month) he declared in his contract with Gem Oil Co. that he had definite information of death of Thomas Atkins. Witness says he based that statement on information received which consisted of a letter from Washington, D. C., attorney dated *September 29, 1914*, wherein it was stated that he had furnished Mr. Greenslade with names of Chicago people who could give information relative history of Thomas Atkins, furnished by the woman witness referred to. (R. 3414.) This was in answer to one written by witness on September 27, 1914, wherein he asked who parties in Chicago were who gave information of *death* of Thomas Atkins. (R. 3414–15.) This letter was written four days *after* his contract with Page and Gem Oil Co.

Witness says he also received information of death of Thomas Atkins from Greenslade after latter had dug around in Washington, D. C. Greenslade told that in New York City before they returned to Leavenworth.

Witness admits writing letter to Gypsy after his return, wherein he stated he was convinced he would be successful in search for living Thomas. (R. 3416.)

Sam Nash now works in Page's bank at Sand Spring; Walter Banks is looking after freight coming in and going out of Page's depot at Sand Springs. (R. 3422.)

Referring to telegram received from Long asking him to come to Tulsa, witness states he now thinks

that prior to that time he must have had talk with some one about employment with Gem Oil Co., but it couldn't have been Sadie James. Was rather surprised to see Sadie at station at Tulsa; she took him out that evening to Page's park. (3425.)

Recalled:

Produces two commissions appointing him to police force of Leavenworth; one bears date May 13, 1885; witness was working in his barber shop when he got that commission; Lillie White moved from Seneca Street before witness got this commission; referring to petition to remove Lillie White and Ella Forrest, witness stated that address therein given for Ella Forrest as 305 Seneca St. is incorrect, Ella lived at 230 Seneca Street. (R. 3907–08.)

Cross-examination:

Commenced working on police force in 1880; was appointed a special policeman in 1884, served part of year, and again in 1885, also in '86, '87. Lilly White never lived on Seneca Street but once. (R. 3909.)

Shown copy of decree in divorce action of Charles Lain versus Sadie Lain (Sadie James) showing that J. K. Codding was attorney. (R. 4156.)

Cross-examination:

Witness wrote a letter to Codding recommending Sadie James to him in another matter (R. 4157).

[There was read into evidence an article from the Leavenworth Times issue of about December 6, 1914, or January, 1915, wherein Jones was quoted as stating that he believed Henry Carter to be Thomas Atkins. R. 4312–13.]

Witness states that he was misquoted, and endeavored to have correction made but without success. (R. 4314–15.)

Asked about letter sent to attorney Codding relative Sadie James and admits the matter involved was the property of the old soldier Lane [Lain]. (R. 4316.)

JOHN COUCH:

Knew girl named Minnie Atkins in Muskogee in 1897; took a trip with her in 1897 to Denver, Colorado, and Fort Logan; stayed four or five weeks; borrowed money of Minnie to return to Oklahoma; didn't to his knowledge see Sadie James in Kansas City on way out to Denver; Minnie didn't leave station, so far as he knew; wasn't out of her company but about thirty minutes; that was in August, 1897. (R. 3480–82.)

Cross-examination:

Witness and Minnie were not married; lived with her at Fort Logan for four weeks. (R. 3483.)

BETTIE MANN, recalled:

States that she told Page, Long, and Josey in summer time of 1914 that there wasn't any Tommy Atkins; admits execution of instrument dated October 12, 1914, between C. H. Rogers and S. C. Mann and Kirkbride, wherein it was declared that Thomas Atkins was then living and his whereabouts known to "said brokers"; it was agreed therein that ——— dollars would be paid upon production of a deed from Thomas covering his allotment and proof of his identity. Witness states reason she signed this

when she knew there wasn't any Tommy was "just because they wanted to frame up and wanted a Tommy Atkins." (R. 3495.) Kirkbride, Rogers, and she agreed to frame up a Tommy.

Cross-examination:

After she had done work for Bartlett along up to March, 1914, she had discovered that there wasn't any such boy as Thomas Atkins; knew Minnie didn't have any; she and Dennis and Rube and Sadie framed up to create one in March, 1914.

Q. You knew when you were working for Mr. Long and Mr. Page and the Gem Oil Company, when you took this trip to Seattle, you knew Minnie didn't have any such child?

A. I had never been able to find where she had one.

When she talked to Minnie in Seattle, before Long arrived, she was in employ of Long and Page, as well as Bartlett; working for both sides. (R. 3496.)

F. B. LONG:

Employed by Charles Page; been with him about one year; prior to that was employed by Page & Josey from 1912 in charge of Page's lands, leases, and rentals; secretary of Gem Oil Co.; no stock in company. Made investigations to find out owners of Atkins allotment; investigated claim of Nancy Atkins and concluded she was not mother of Thomas. Received advice from one C. B. Rogers that he had information about Thomas; agreed to give Rogers one-

eighth interest in a lease if he could procure one; in May, 1914, Rogers told them he didn't believe he could locate Thomas; that he had been working with Betty Mann and he and Betty believed Thomas was dead; that Betty would be able to locate Minnie Atkins; later came to tell them Betty knew where Minnie was. Next day witness met Betty at Sapulpa. She told witness she had been working for Bartlett; that she had located Minnie and was going to see her; that Bartlett would be there also. Witness agreed to pay Betty $2,000 if she put them in touch with Minnie, and they obtained a lease from her. Betty would not tell witness where she was going, but promised to wire him; about week after received telegram signed Bill Jones, asking if he was ready to come. Wired answer that he was "if you are positive you have the right party"; received another wire telling him to come at once; went to Seattle, Washington; didn't send Betty any telegrams en route; arrived Seattle Saturday, June 13, 1914; saw Betty, who told him Minnie was at Fort Lawton; also told him that she (Betty) had Sadie James with her; witness knew of but didn't know Sadie then. Betty told him Sadie really had located Minnie and had talked to her but had refused to tell Betty where she was. Betty had found out where Minnie lived by hiring detective to follow Sadie. Betty put him in touch with their detective, Kohler, who went with witness to the fort; went alone to Minnie's house; there were three men there, one holding horses, two

on the porch with Minnie; witness was introduced by Minnie to the two men, Capt. McNab and Lt. McComb; witness told them he wanted a lease on the allotment. Capt. McNab asked if witness was white man "who is supposed to be here"; witness answered "I suppose I am." McNab said there had been a negro woman around there for 4 or 5 days bothering Minnie, wanting to buy the land; witness told him she was not employed by him nor did he know anything about her; that he wanted a lease, not the fee. Told McNab he had brought lease and contract and would like to talk it over with him. He then talked alone with Minnie to satisfy himself as to her identity; she told him she was mother of Thomas Atkins; McNab and McComb then came into the house and lease proposition was discussed; they told witness the negro woman had offered $4,000; witness stated he would give more than that and one-eighth royalty for a lease; it was suggested that attorney be employed who was familiar with lease forms; McNab and McComb seemed a little suspicious of witness, and he gave them references to wire to. McNab said they would consult their attorney and for witness to return in afternoon. Returned to fort about 3 p. m.; saw some visitors on porch—"saw this negro woman on the porch"; didn't go up to house; waited around and soon McNab and Hanford came along; McNab and Hanford were to represent Minnie; discussed terms of lease and witness's proposition. Hanford stated they were having Minnie execute trust deed to McNab so she would be protected; agreed that

witness would not attempt to see or talk to Minnie any more, but have dealing with McNab and Hanford; didn't see Minnie again until day he left Seattle.

Witness went back to hotel; that evening Hanford phoned him that Minnie has executed trust deed to McNab. Next day, Sunday, Hanford came to hotel and said they were ready to do business; Hanford stated they had concluded to make independent investigation and he would write friends to inspect property and report; witness suggested that would keep him in Seattle too long, and agreed to advance expenses of trip to Hanford to make investigation with understanding that he would reimburse witness if lease was not executed to them. (R. 3497–3506.)

Saw Sadie James and Betty Mann on Sunday at their hotel; Betty phoned him to come; Sadie James was there and flew into rage over fact witness was there, accusing Betty of double-crossing her. Witness told Sadie he had seen Minnie and had found that the Army officers had taken over her affairs; Sadie said "we don't want to fall down on getting Minnie" and offered to get Minnie and take her to Everett, Washington, for $6,000; witness told her there was nothing to be done with Minnie, that she had turned everything over to McNab; did not state to Sadie James there at that time that he (witness) had found a Tommy or would make a Tommy. Saw Minnie next day (Monday); she was called over to McNab's quarters, where witness and Hanford were with McNab, and witness asked

her if she was satisfied to have McNab and Hanford act for her.

In conversation with Minnie on Saturday, Minnie told witness Tommy was born in Leavenworth, Kansas; didn't inquire of her where or when he died. (R. 3506–08.)

Upon arrival of Hanford and witness in Tulsa, the latter placed Hanford in touch with Page and Josey, and negotiations were had which resulted in a lease on a bonus of $10,000. (R. 3508.)

Next made investigation of Indian Office records relative Atkins family, and interviewed several persons in Oklahoma. Went to Seattle about first week in July to go over data with Minnie; discussed with Minnie for several days her history, made memo. of substance of conversations with her. (R. 3510–11.)

Witness reads from memo that Minnie stated she had Tommy right after she left Lt. Stafford's (witness deduced that this was in 1886 or 1887); Minnie stated boy born in summer; that he was born in Sisters' Hospital; she went right to hospital from Stafford's; witness states Minnie first said something about boy being born in colored place but quickly changed it, saying it was a slip. Witness did not put that in memo. (R. 3516–17); Minnie stated that she named Thomas after *her* father; that she couldn't get any wages with child on her hands, so she gave him to a woman in Leavenworth, part colored; then she went to Ft. Logan with 18th Inf.; stayed there 8 years; in 1888 or '89 received

letter to send money to the boy—she did so. Had Alice and two boys there; Alice died when one year old; went to Oklahoma with Harvey and Charlie Harrison (witness figures this as 1894); Minnie thinks she was in Oklahoma two years; Kate Holden took the boys. Minnie told them about going to the payment at Okmulgee in 1895 and that Thomas was then alive; that it must have been about 1896 she went to Denver with John Couch; finally landed in Ft. Logan latter part of 1896 or early part of 1897; 7th Inf. there then; later she stated went to Ft. Logan in July or August, 1895, and made trip with Couch in July or August, 1895; after a year went to Detroit, Michigan; stayed there two years then returned to Ft. Logan; while there then she heard from Thomas who was still in Leavenworth (R. 3517–19).

Witness says Minnie also stated (this not on the memo.) that when she was at Detroit she received a letter telling of Tommy's death—received the letter after 7th Reg. came back from Cuba. (R. 3519.)

Sadie James in August, 1914, came to Gem Oil Co. office and told witness she had quit working for Bartlett, that they had been all over the United States looking for Tommy, had located five or six, but they didn't prove out; that she had lots of information that would be valuable to Gem Oil Co.; witness took her to Page, who directed him to bring Sadie out to the park at Sand Springs. Wit-

ness met Sadie and her husband at park; found Page and had talk. Sadie represented that she knew all about Tommy's life history and could get witnesses; knew he was dead. Page told her if she got the evidence he would give her $1,000. Sadie wanted a contract and one was drawn next day; check for $1,000 was deposited in escrow to be delivered when Sadie fulfilled her part of contract. (R. 3529–30.)

Sadie went to Leavenworth and witness met her there. She introduced Rube Smith to him as a man who would know all about Tommy Atkins. Had told him previously that Rube was the father of Thomas. Rube told witness he might be, didn't know, he never said he was. Witness wanted him to admit it. Told witness about Minnie, and he fixed birth of Tommy as 1885 or 1886. (R. 3531.)

Witness relates visits and interviews with Kate Logan, Sam Nash, and George Crilly (R. 3531–33); Crilly gave him some 40 or 50 names of people who might know about matter; Nash also gave him some names (R. 3533); employed Rube Smith to look up information for him, agreed to give him $5 a day, and verbally agreed to give him $500 if they won lawsuit (R. 3534).

In meantime, Sadie James had been working to discover place where Tommy died; she had also made trips to Weldon, Missouri, and Pilot Knob to visit cemeteries; witness expressed dissatisfaction and said that she was not getting anywhere; Sadie then pro-

posed that she would fix up a burial place for $500; witness declined and then had Tulsa office call Sadie down there. Sadie went away next morning (R. 3534–35); witness never talked to Sadie after that (R. 3536); later says he is mistaken about that when he recalls date of contract with Dennis Jones (R. 3537). Sadie returned to Leavenworth and told him Dennis Jones was through with the Gypsy Oil Co. and to go to his office and see him. Witness went and had brief talk with Jones, who stated he could accept employment but would rather make arrangements with witness's employer. Witness agreed to pay Jones's expenses to Tulsa; few days later Jones came to Tulsa, Sadie met him and brought him to office of Gem Oil Co., where he executed a contract. Witness returned to Leavenworth and saw Mr. Hanford; it was agreed after another conference at Tulsa that Hanford should go to Seattle and discuss with Minnie a valuable line of evidence which witness had secured, Minnie had previously testified at Sapulpa. (R. 3537–38).

In a week or 10 days they decided to take some depositions. Mr. Hanford came back with Minnie, who "was very much surprised to learn that we had learned the truth about her" (R. 3538), the truth about the place of birth of Tommy. She had told Mr. Hanford on way from Seattle that she didn't want that known and didn't think it was anybody's business where he was born, and she had testified that she had the boy at the Sisters Hospital, and that in truth Thomas Atkins was born in Granny Letcher's

house (R. 3538); that was in fall of 1914; *October*. Witness and Minnie went to Leavenworth and talked to Crilly. Crilly and Minnie recognized each other. Witness had previously phoned that Minnie was with him (R. 3539).

Witness details visits made with Minnie to different persons to see if they would recognize her. (R. 3540–41.)

The next day Rice, Page, and Josey came and talked over all the different information with Minnie and soon after that the day was set for taking depositions and all these witnesses testified in the State court case. (R. 3541.)

Cross-examination:

During employment in Indian Service became familiar with records in office of Dawes Commission.

Knew of Sadie James; she was a notorious woman; had been tried for murder a few times and ran the "Bucket of Blood." (R. 3544–45.)

Knew reputation and character of Betty Mann and knew of her conviction for forgery prior to 1914. (R. 3546.)

The $10,000 for the lease was paid in two checks, both payable to Hanford. (R. 3571.)

Explains statement made in letter written July 7, 1914, while en route to Seattle with Hanford, that "Hanford is still talking right" thus: That when witness and Hanford left Seattle, Hanford was very distant and cold; after reaching Tulsa he maintained that attitude; "we couldn't get acquainted with him personally"; this even after agreement

prepared providing that McNab as trustee and Minnie were to furnish Hanford's services as attorney and they (Page et al.) to pay expenses; they were trying very hard to get close personally to him and finally before they left for Seattle witness thought he had gotten pretty close to him. Josey admonished him particularly to keep Hanford in the case, that he wanted his services on account of his connection at Seattle. Hanford had said before he left that he would stay with them; that he would continue as attorney for Minnie, provided they (Page et al.) paid his expenses; a contract was prepared and Hanford signed it and it was signed by McNab and Minnie.

Hanford had been gotten into case by McNab, and Minnie was dependent upon McNab and McComb families, consequently Page et al. wanted to keep Hanford in the case. (R. 3579.)

After interviewing Minnie and getting data about her history, etc., which was incorporated into memo., the information contained in the memo. was put into an affidavit which Minnie signed. "That affidavit has the exact facts that were in my written notes because it was written from them." (R. 3585.)

Called upon to produce affidavit, witness states unable to locate it. Hanford states he had it and that he destroyed it because it was not true. (R. 3587.)

After Minnie testified in the State Court suit at Sapulpa on July 21, 1914, wherein she stated that she carried Thomas when she was at Staffords and

went to the Sisters Hospital and had the child there, and that but one child was born to her at Leavenworth; witness went to Leavenworth the next day and looked over records of Sisters Hospital, found that maternity cases were not taken there until after 1890; went through the records for 1885, 1886, 1887, 1888, and couldn't find that Minnie had been there. Then went to Cushing Hospital but couldn't find any record of Minnie being there (R. 3608–09). Minnie and Hanford went to Leavenworth a few days later and then Minnie returned to Seattle (R. 3609); Hanford went to Boston to see Peterkin; that was first time witness had heard of name.

Next step in case was when Sadie came in August. (R. 3610.) Learned from her or Rube Smith name of woman with whom Minnie had left child, Granny Letcher on Seneca Street, and that it had been born there. (R. 3614.) Minnie testified at Supulpa that the baby was born at the Sisters Hospital and she testified at Tulsa that it was born at Granny Letcher's. (R. 3633.)

Witness is unable to find statement made by Minnie to Page, Josey, Rice, and witness after they had gone over case with her. (R. 3629–35.)

Sadie proposed to them in consideration of $1,000 to produce witness who would swear Tommy was born and lived until 1899 and that his father was a negro. She was to receive the $1,000 if they won out. (R. 3635.)

THOMAS E. KIRKBRIDE:

Contract executed between him and Sadie Mann and one Rogers is referred to; witness states Betty Mann told him she knew Tommy Atkins was alive and when and how she would reach him; witness declares he did not enter into a conspiracy with Betty or Rogers to manufacture a Thomas Atkins. (R. 3661–62.)

R. A. JOSEY:

Associated with Page in Gem Oil Co. To best of his recollection first time he ever heard any claim that Thomas Atkins was a myth was when Minnie Atkins made her confession at Seattle. Page and he were sole owners of capital stock of Gem Oil Co. (R. 3666.)

Cross-examination:

Wasn't anxious that Hanford be employed or retained by them; didn't know anything of his legal attainments or ability. (R. 3667.) Can't explain what he understood from statement in letter received from Long that "Hanford is still talking right" (R. 3668–69); doesn't remember receiving affidavit of Minnie Atkins which Long stated in another letter he was sending (R. 3670). Does not remember Minnie making written statement in Kansas City, but remembers being present with others and having conversation with Minnie. (R. 3670–71.)

Must have received information regarding Sadie James prior to wire from Long July 16, 1914, because Long refers to her only as "Sadie." Doesn't remem-

ber what information he had previously unless it was her in connection with other parties trying to secure lease. (R. 3671.)

Doesn't know why assignment to lease of Gem Oil Co. was made to himself and Page; recollection is Rice & Lyons (attorneys) suggested it; witness was depending on Page and Page's attorneys.

Witness sold his interest in land involved to Page for $140,000, with an agreement that if litigation is lost witness is to pay back $20,000 (R. 3676–77); market value of property at that time was at least one and one-half million dollars (R. 3678).

EDWARD C. HANFORD:

Remembers when Dr. Carpenter testified at San Diego; had not then seen Dr. Carpenter; had heard that his testimony would be worthless because of his senility; relates how he happened to put him on stand. (R. 3026–27.) Cross-examination on this matter. (R. 3028–29.)

Commenced practice of law in Seattle in 1898. First met Minnie Atkins on June 13, 1914. Was called to Fort Lawton near Seattle by Capt. McNab who told him of Indian woman then called Indian Minnie, from whom a negro woman was endeavoring to secure deed of oil land, offering $4,000 therefor. McComb and McNab had been called into the case; a man named Long was also there asking for a lease; he had left form of lease and contract; witness advised that matter be looked into before any papers signed—that it might be possible to develop land

themselves without leasing; went with McNab to Minnie's house; witness was introduced to her as McNab's lawyer called in to look after her interests; Minnie said she didn't want her interests looked after, that she intended to accept the $4,000 offered for land. Witness and McNab tried to "jolly" her out of that idea and told her they would do everything they could to prevent her selling unless land was not worth more; she was determined; Minnie told them of Sadie James bothering her and that she (Minnie) feared her.

While they were talking Sadie James arrived at car station and started towards Minnie's; an auto with two men in it followed her; Sadie didn't come to house, and they sent Minnie to see what was the matter; Minnie brought Sadie to house and she said the men were detectives who were following her; she was told that witness was McNab's lawyer and that nothing would be done until matter was looked into. McNab told Sadie that Long was endeavoring to secure lease for Page; Sadie told Minnie she would get term in the "pen" if she signed those papers because Minnie didn't know Thomas was dead. Minnie insisted Thomas was dead. Sadie told McNab and witness she had seen Tommy when he was five years old, in 1899. Sadie represented that she had been sent out by Dawes Commission to get the land.

McNab and witness went out to see detectives, and on the way agreed that Sadie was dangerous and must be got rid of; detectives would not disclose for whom

they were working; returned to Minnie; told Sadie they wanted her to keep away from Minnie, and she must leave. Sadie departed, and McNab and witness started for post; on way witness suggested that they have Minnie execute deed of trust to McNab in order to keep her from signing property away. On the way they met Long; he was waiting for them; had seen, so he said, that something was going on at the house; was told plan to have McNab made trustee, and expressed pleasure; McNab assured him of a fair chance; Long agreed not to attempt to see Minnie, and was assured the matter was in McNab and witness's hands. Deed of trust was executed by Minnie, they agreeing to see that she got $4,500 if she would wait until witness went to Oklahoma to investigate. (R. 3690–95.)

At time memo. of trusteeship executed Minnie admitted that she had five children. (R. 3696.)

As soon as trust agreement was entered into witness informed Long thereof, and that he would have to deal with witness acting for NcMab. Had talk next day with Long, as a result of which it was agreed that witness should go to Oklahoma at expense of Long to make investigation, and if lease was entered into with any other than Long's company witness would repay Long for expenses. Next day Long gave witness ticket to Oklahoma and $100 expense money. (R. 3696–97.)

Long desired to be sure Minnie's action in trust deed was voluntary, so asked Minnie about it (in presence of McNab and witness); she said it was satisfactory. Long desired Minnie's signature to com-

pare with a photo signature of hers which he had—this he later explained was to check her signature with signature on roll. (R. 3697.)

Went with Long to Oklahoma, and on the morning of their arrival went out early to see Page, with whom they had breakfast, and discussed question of leasing. Page made several offers. Upon arrival of Rice, Page's attorney, and after further discussion, Page offered $10,000 for lease with 12½% royalty. Witness told Page he thought that would be satisfactory, and if he decided to make lease to Page that would be considered tentative agreement as to bonus price. (R. 3698.)

Next day Long and witness went to Sapulpa to look into record of suit involving Nancy Atkins's claim to land; called up judge before whom case pending and informed him Minnie was living, and he stated he would not render the judgment prepared in that case. Did so next day, however. (R. 3699.)

Went to Muskogee and looked into Indian Office records relative Minnie and Nancy Atkins and others. Witness got oil maps and explanations and opinions regarding Cushing pool and its probable extent. Had several conferences with Page and Rice and agreed upon form of lease in all respects except that witness insisted Page should bear all expense of quieting title in Minnie; they insisted that witness should cooperate; finally agreed that McNab and Minnie would furnish witness's services free of cost except that they (Page et al.) should pay

witness's expenses. Contract entered into and sent to McNab and witness wired later that immediate drilling necessary and that execution and return of lease should be expedited.

McNab had wired of interest of Bartlett and Gypsy Oil Co. to secure lease, but witness found out about forged deed of Minnie, which they had taken, and felt that they were adverse claimants and he couldn't deal with people who were claiming under a forged deed, and that influenced him to give Page the lease as well as the fact that he was an individual and witness was dealing with him rather than a corporation, where he would have officers to deal with. (R. 3700.)

At his request payment was made to witness in two checks of $5,000 each; reason given was that he desired to have $5,000 to cover his expenses while litigation was going on, the other $5,000 to go to Minnie. One check was made not payable until July 30th; reason assigned by Page and Josey was that they were not satisfied of the identity of Minnie. (R. 3701.) Agreed that Long should return to Seattle to satisfy himself as to identity of Minnie. Long returned to Seattle with witness and they went to American Lake and explained matter of checks to Capt. McNab. He agreed to arrangement subject to approval of Minnie. (R. 3702.)

Long and witness interviewed Minnie who told her life history; Long took notes; Minnie said that while at Leavenworth she had given birth to Thomas Atkins at the home of an old colored woman with whom she

had left him; Long asked her the name of this colored woman; Minnie asked if that was necessary, to which Long replied yes, that they could go there and trace Thomas and find if he is really dead; Minnie said "wait a minute"; got up, left the table, returned, sat down, and said she was mistaken, that he was not born there but at the Sisters Hospital. Prepared and had Minnie sign affidavit reciting details told by her. (R. 3703–04.)

Upon McNab's return to fort he talked to Minnie about the two checks and he told witness it was satisfactory. They cashed one $5,000 check; witness gave McNab $2,800, keeping $2,000 for expenses. (R. 3705.)

Received word from Rice & Lyons of a hearing to be had at Sapulpa and started for Oklahoma with Minnie, who was needed for purposes of identification. [This Sapulpa hearing was an injunction suit brought by Gem Oil Co. against the Gypsy Oil Co. to prevent interference with Gem's possession of property. R. 3706.]

After having started back with Minnie to Seattle, stopped at Leavenworth to look up records at Sisters Hospital and was told no confinement cases were taken at the time witness figured Minnie had child. (R. 3707.) Witness scolded Minnie for lying and she confessed that she had lied and that child was born at an old colored woman's in Leavenworth; witness drove her around town, but Minnie couldn't recognize house although she recalled places she had been and

places she had known; wouldn't tell name of colored woman. (R. 3708.)

Interviewed Peterkin in Boston, who told of his relations with Minnie and of birth of girl child to her at Woods in 1886. (R. 3709.)

Tells of being informed of employment of Sadie James and of warning Page that she was a dangerous woman; Page was sure that Sadie would find evidence of death of Tommy. (R. 3711.)

Witness relates trip of investigation in Leavenworth and how evidence was secured relative to Granny Letcher, etc. (R. 3711–13.)

Went to Seattle and endeavored to get Minnie to tell about her past, saying to her that they had secured information about colored woman at Leavenworth, etc. Minnie wanted to return to Leavenworth and would not tell anything, although witness states he "could see that the information they had was correct."

Deposited check for $5,000 for collection (second check). Received telegram that check not paid. Wired Tulsa and received reply that Rice advised Page not to pay check. (R. 3714.)

Received word that depositions were to be taken and to bring Minnie. On way back Minnie admitted information witness had was correct; said reason she had not told was she did not want people at Seattle to know it. Upon arrival at Kansas City, Page, Rice, and Long talked to Minnie, who wouldn't tell anything. One of these men told witness Minnie was afraid he (witness) would tell McNab and that

Seattle people would know; witness assured Minnie, and she then stated she had had Tommy at Letcher's; so they decided to take the deposition; Minnie taken ill and could not give her deposition when others were taken at Leavenworth; afterwards Minnie's deposition was taken at Rice & Lyon's office. (State court case.)

Witness's next activity with this matter was after receipt of copy of complaint on behalf of Quinton Garrett suing for cancellation of Thomas Atkins's allotment and for its allotment to him. He left this to Rice & Lyons. Went out to see Minnie and found Mr. Montgomery, a representative of the government, who told him he was investigating Minnie's claim to the land, whether it was good and whether suit should be brought for cancellation of the allotment and patents. Stated he wanted the true facts, but wanted to talk to Minnie alone; Minnie insisted on Hanford staying. Minnie was very much excited about something Montgomery had read to her to effect that people at Sapulpa had had witnesses to prove father of Tommy was a negro. Witness assured her that witnesses had not so testified. Asked Montgomery to let him see what he had read to her. Mongtomery refused, but said he had shown it to McNab in confidence. Told witness he (witness) had been deceived by people down there, but witness insisted that he had facts. Montgomery said he would return next day. On that day witness went to Minnie's and found Montgomery there, who

asked if he knew Minnie had executed a deed to Page; Minnie told witness she had, which was his first knowledge of it. Montgomery asked Minnie several times if she was mother of Thomas Atkins and she said she was but his father was not a negro. Montgomery told her that Government had proof the whole thing was a frame-up; Minnie asked why she was not allowed to hear depositions taken at Leavenworth; witness reminded her that she was sick. Montgomery read to Minnie deposition of George Crilly, and she corrected several statements made by Crilly, but said Crilly remembered it better than any of them. (R. 3717–19.)

Montgomery left saying he would return next day but Minnie requested him not to and he said he would wait until Friday. On Thursday witness went to see McNab, found Montgomery there; McNab said Minnie was on her way there.

Upon her arrival, McNab lectured Minnie about the deed given to Page, told her Montgomery was there to find out if she was mother of Thomas Atkins; that he claimed to have proof that she never had such a son and that Minnie should tell the truth; that Montgomery would give her immunity if she had claimed land falsely; McNab left room and Montgomery told witness he couldn't give immunity but could agree to try to get it; witness told Montgomery he had no right to talk of immunity and sending people to penitentiary and to ask her what he wanted to know; Montgomery asked if she was mother of Thomas

Atkins and she said she was—nothing could make her change that. Montgomery told her he knew she never had but those three children born at Fort Logan and had never had a child named Thomas Atkins; that if she did make a statement now he was through and she could take the consequences.

Witness and Montgomery had some altercation about talking of immunity and statements about children and nonexistence of Thomas; Montgomery then said to Minnie, "You never had any boy named Thomas Atkins, did you, Minnie?" and Minnie bobbed her head.

McNab returned to the room and Montgomery told him Minnie had made statement and he wanted it in writing. Statement written, and Montgomery asked Minnie to sign, but she wouldn't say anything and wouldn't sign. McNab had left and witness called him back. Minnie asked McNab if he wanted her to sign and he told her she should not sign if it was not t[illegible]ut if it was true she should sign it. Minnie sign[illegible] It was agreed to leave the statement with Mc[illegible]ab to be destroyed if immunity was not secured, and if secured to be turned over to Montgomery. (R. 3720–23).

McNab returned the statement to Minnie the next day and she burned it. Witness states his recollection of contents of statement to be that Minnie was not the mother of Thomas Atkins and that the only children born to her were Alice (Mabel) and Harvey and Charlie. (R. 3724–25.)

Next day witness went to Minnie's; she wanted him to get Montgomery, who she said was a devil and had made her sign that paper—something that was not true. Witness told her he didn't want her to tell him anything; went to McNab's and found Montgomery there and told McNab and him that Minnie had told him statement was not true; McNab did not go, but Montgomery went with witness to Minnie's, who retracted her statement and declared that she was the mother of Thomas Atkins. (R. 3725–26.)

Witness tells of efforts made to collect the second $5,000, a part of the $10,000 bonus consideration for lease and of refusal of Gem Oil Co. to pay until Minnie "told the truth." $500 had previously been paid on this second $5,000. While admitting that lease was made without guarantee or warranty of title, yet Gem Oil Co. contended that they were entitled to "fair dealing" from her. This was reason advanced for not paying. Rice wrote witness to that effect and stated that when Minnie had given testimony "in conformity to the truth," he saw no objection to paying *a certain portion* of the money, but that it was not advisable to pay all until she had appeared at the trial and testified. (R. 3744–46.)

Witness represented Minnie Folk. (R. 3747.)

Cross-examination:

Doesn't think Minnie desired an attorney to represent her, for she didn't want any interference. (R. 3757.) The trust agreement defines witness's service and fixes his fee; also later gave Minnie a stipulation to do all things necessary as her attorney

in quieting title to land, he to get 10 per cent; this made after he returned from Oklahoma at the time McNab was released as trustee by Minnie. Had general understanding with McNab as to what should be done before Minnie was consulted. Told Minnie in "joking" way that they would send her to Canada where "these people couldn't get at her." Admits that at receivership hearing he stated they would take steps to prevent her from selling her land and that he said nothing at that time about "jovial way." (R. 3759–60.)

First guaranteed Minnie $4,500; then, after talking to Long, guaranteed $5,000. (R. 3761.)

The agreement respecting his fees was that he should receive 10 per cent of the royalties; expenses to be paid out of that. (R. 3762.)

Page has advanced witness's expenses of a personal nature; has paid the expenses witness was put to in this case; witness made arrangement that during pendency of this suit Page should advance witness $125 per month; Page has been doing this (R. 3763); also took employment from Rice & Lyons. Tried to get McNab to advance more money out of the $3,000 balance of first $5,000, but latter declined to do so. (R. 3764.)

Later, witness states that probably he retained $3,000 out of the first $5,000 and gave McNab $2,000 (R. 3778). Minnie did not receive a cent out of the first $5,000. The first money she received was an advance of $500 to be charged against the

second check when paid (R. 3779); she got the balance of $4,500 after she made her statement in Kansas City, when she was sick at the hospital This statement bears date September 25, 1914; depositions were taken first week of October (R. 3780).

On first trip from Seattle to Oklahoma when he accompanied Long to investigate, witness and Long arrived in Tulsa on Sunday morning; went to Sapulpa Monday to investigate court record in Nancy's suit; Tuesday went to Muskogee with Long to look over Dawes Commission records and returned Tuesday night to Tulsa; sent telegram to McNab to execute lease which had been left there by Long; didn't offer lease to anyone but Page; wanted to lease it to Page. (R. 3785–91.)

Page and Josey were to defray all expenses of witness incident to litigation but witness explains retention of $3,000 by him from first $5,000 as necessary to pay his living expenses and other expenses not considered necessary—treated it as an advance on his fee; when McNab relinquished trusteeship Minnie agreed that he (McNab) might keep the $2,000. (R. 3809.)

Now states real reason why second check not made payable at once was because Gem Oil Co. was not sure of Minnie's identity; the matter of Minnie's not testifying right did not come up until later. (R. 3811.)

In first conversation had with Minnie at Seattle, she admitted having five children; at Sapulpa hear-

ing she said she had four; in the affidavit she gave which witness declares was false all through, she said she had four children; and she so declared at Tulsa in her deposition; when Montgomery took her confession she said she had three; witness on none of these occasions corrected her or called attention to discrepancy; on receivership hearing she said she had five children and that is first time she mentioned Peterkin child; at deposition before Examiner Penick she said four and a miscarriage—the latter clearly a reference to Peterkin child. (R. 3796.)

Witness shown schedule of dates in handwriting of Long (Govt. Ex. A–112, R. 4832–33) indicating birth of child in 1886 or 1887; witness says this was calculation made by Long from Minnie's narrative (R. 3797).

Q. Tell us how it happened when you went to hospital in Leavenworth you looked at the records for 1884 and 1885?

A. Mr. Pinson, we guessed up and down and all around at the time that that boy was born and at that time I suppose I thought it was 1884 and 1885; and I had stopped looking for the record of Minnie's being in the hospital, when she was so positive that she had been in the hospital that I started in again.

Minnie was still so positive that he looked further and found it in 1886; guesses he got the information to look at 1884 and 1885 from one Marshall who had some recollection as to when Minnie left Carlisle. That he supposes was first time he was advised of Carlisle dates. (R. 3798.)

In her first testimony at Sapulpa in October, 1914, Minnie stated child born immediately after leaving the Staffords (R. 3798). Witness first heard of Peterkin child before this from Peterkin in Boston in August, 1914, and had wired something about Thomas being a girl (R. 3799). The Tulsa testimony was after Sadie James had been employed (R. 3800). The first time he heard of Granny Letcher was after Sadie had been employed. Admits that finding out about Peterkin baby had something to do with Minnie's changing of date as to birth of child in her testimony at Tulsa. She has always testified that she first went to Hydes, then to Grodevants, and then to Staffords; then she put Tommy back before Staffords and at Hydes; after Tulsa, the next testimony was at receivership hearing when she mentioned Robert Lee Peterkin (R. 3800, 3801). Witness wired Stafford because Josey and Rice had been informed of this Peterkin child and wanted further effort made to secure facts. Had previously communicated with Stafford in July, 1914, warning him not to disclose any information to any one; didn't want Gypsy Oil Co. to get information (R. 3802–03); also warned Peterkin not to disclose information to Rosser (R. 3804–05).

It was necessary that child's birth be placed at least ten or eleven months prior to the Peterkin child, hence the change was made between Sapulpa and Tulsa testimony. (R. 3805.)

In Tulsa deposition taken at Rice & Lyon's office, Minnie put Thomas' birth anywhere within the 2½

years she roomed around Leavenworth and fixed it at Granny Letcher's; the next hearing was the receivership and they then had Peterkin information and Carlisle date and realized that Thomas if born before Peterkin couldn't have been born earlier than August, 1885, and that he couldn't have been born after Robert Lee Peterkin, who was born in July, 1886, because they knew of Minnie's Fort Logan history (R. 3806); therefore it was necessary to fix birth of Thomas between middle of 1884 and middle of 1886. So that Minnie testified at receivership hearing that Thomas was *not* born at Hyde's and then she went to Grodevant's for about a year and Thomas was born within that year. The Grodevant expense book was found before Minnie's deposition was taken before Mr. Penick.

Q. Did there exist in your mind at the time Minnie's deposition was taken at Seattle before Mr. Penick any reason for changing her testimony from the testimony she had given at the receivership hearing?

A. Well, we knew the facts to be different. There was no reason in my mind for changing her testimony. (R. 3807.)

Referring to Montgomery's visit, witness states that he told Minnie that Montgomery's object was to get statement adverse to her interest so that land could revert to Creek Nation. The thing that rankled most so far as Minnie was concerned was that Thomas was claimed to be a negro child. This was indicated from testimony given by Crilley which

Montgomery read to Minnie. (R. 3814–18.) Admits it was clearly understood by Minnie before signing confession that if she signed it would take land from her; Minnie was in good humor not two minutes before she signed. (R. 3818–19.)

Witness explains his visit to Minnie, the day after confession was signed; that he felt that the confession was not true and he wanted to talk it over with McNab and Minnie. Admits that confession of Minnie would have cleared up the discrepancies in her testimony and would have accounted for all the various suspicions which had been raised in his mind since the beginning of the suit. (R. 3820.)

By agreement, Hanford for defendants Page et al. reads certain questions and answers from deposition of Elizabeth Dillman given in the State case at Leavenworth in October, 1914, with understanding that she would admit, if on the stand, that she had testified as the deposition reads, as follows:

Became acquainted with Minnie Atkins 21 years ago at Fort Logan, Colorado; when witness first met her Minnie had come from Leavenworth; didn't know her there; was told she came from Leavenworth. (R. 4481–82.)

CAPT. ALEXANDER J. MCNAB:

Acted for a time as trustee for Minnie Atkins relative land in controversy; saw Sadie James on one occasion only when she came to Minnie's house at Fort Lawton, when detectives were following her; at that time witness persuaded Minnie not to do any-

thing in the way of signing away land, and arranged to have Hanford act as her attorney; didn't see Sadie James after that to have any conversation with her; she never told witness that Minnie was not telling the truth; only statement she made about Thomas Atkins was that Minnie was his mother; that she had known Thomas and had seen him long after Minnie had. Minnie stated to witness that Sadie claimed to know her, but that she didn't remember her.

Betty Mann came to see him, but he did not discuss case with her. Bartlett came and asked that his company be afforded a chance to bid on the lease and that witness wire Hanford to see Gypsy Oil Co. before making lease. Witness signed a telegram to Hanford. Bartlett stated he had given lease to Gypsy and was there endeavoring to make title good.

Subsequently Miss Alice Robertson came to see him and wanted to talk to Minnie to see if she could identify her as the Minnie Atkins she had taught in Oklahoma. She identified Minnie as such. Hanford was present.

Lease of land in controversy was made by him, as trustee of Minnie, to Gem Oil Co., consideration $10,000; $5,000 was devoted to expense, incident to case, including $2,000 turned over to witness as trustee.

Minnie didn't get the other $5,000 until later, as payment on the second check was withheld because Gem Oil Co. not satisfied of Minnie's identity. (R. 3832–39.)

Cross-examination:

When Minnie first came to him regarding this matter, witness understood Sadie James had been to see her, but she wasn't under Sadie's influence; witness had no knowledge of any claim that there had never been a Thomas Atkins (R. 3839–40); only question was whether Minnie was the mother (R. 3841).

The first time he heard of the case was after Sadie had talked to Minnie; he based his conclusion that Minnie was the mother of Thomas Atkins upon statements made by Minnie and Sadie James. (R. 3846.)

Minnie was not under guard at any time; she did, however, stay at Sergeant Everlynn's house to get away from people who were annoying her—this after arrangements had been made for Hanford to go to Oklahoma with Long. (R. 3848–49.)

Denies that Miss Robertson, when she had interview with Minnie, was interfered with or that Minnie was told not to answer certain questions. (R. 3850.)

Mrs. Catherine Sisk McComb:

Wife of Lt. J. G. McComb; knows Minnie; latter came to her for advice in regard to property involved in this case. Minnie told her she had had five children; doesn't remember stating to Hanford and others that Minnie had five children; it was after Hanford was retained in case that Minnie told her of having five children. Minnie told her of Sadie James being there and she had told her of the allot-

ment and witness understood Sadie had brought Minnie good news. (R. 3852–58.)

EUGENOLA HUNT:

Stenographer for Dennis Jones; was present in Jones's office in spring of 1914 when Sadie James came to see Jones; Sadie asked Jones and Rube Smith about boy named Thomas Atkins born at Granny Letcher's; asked if they knew the old residents there in Leavenworth and the location of different people who could remember when Granny lived on the street; said she wanted to get these people to prove when Tommy was born; next time she came she had Betty Mann with her; didn't say anything about Tommy Atkins case; wanted Dennis to sign some papers but he refused because they were made out in Jackson County, Missouri, and he was a notary in Leavenworth County, Kansas. (R. 3865–67.)

Cross-examination:

Is a niece of Dennis Jones. *Bettie* brought the paper for Dennis to sign as notary (R. 3868); thinks Rube Smith was in office first time Betty and Sadie came. When Sadie was in Leavenworth she would come into Dennis's office. (R. 3870.)

GRANT FOREMAN:

Attorney at law, Muskogee, Oklahoma, in 1903, 1904, 1905; he and John R. Thomas had offices adjoining office of principal chief of Creek Nation; his firm had access to records in office of principal chief; witness's firm represented Chaney Trent in relation to her application for enrollment; shown

Govt. Ex. A–15, R. 4660 (record of delivery of deeds of allotted lands); states he doesn't know anything regarding notation "Held for investigation," etc.

Cross-examination:

Learned in connection with Trent case that Dick Atkins, father of Chaney Trent, had a son Thomas Atkins. Witness's firm endeavored to obtain enrollment for Thomas Atkins. (R. 3873.)

CHARLES PAGE:

Owned a half interest in Gem Oil Co. Remembers incident of company getting lease from Minnie Atkins of certain property; didn't give it much attention; Long and witness's lawyers looked after it almost entirely; Josey looked; after it a little; $10,000 was consideration for lease; gave two checks of $5,000 each; paid first check, but withheld second because they wanted Minnie identified a little better; didn't pay second check when due because Minnie had told them things which upon checking up they found not true, so Minnie was brought from Seattle to Kansas City in order to confront her with some of the Leavenworth people, they having learned in meantime that child (Tommy) was born at Granny Letcher's; witness and Josey went to Kansas City; took Minnie to a lawyer's office to secure statement from her and have her meet these people to see if it would bring it out of her; thought they got it at that time; after getting her statement admitting she had baby at Granny's, witness didn't pay much attention to the matter and they paid the $5,000.

Was endeavoring to establish identity of Minnie and to ascertain whether Tommy was alive or dead; first heard of claim that Tommy never existed when he heard of Minnie's confession at Seattle; neither Sadie James nor Betty Mann told witness that Thomas Atkins was a myth, so far as he can recall.

Heard that suit was to be filed, sent telegrams to Commissioner of Indian Affairs at about time Government brought suit, in which he asked opportunity to be heard before suit was filed, and expressed willingness to present any information desired. (R. 3876–80.)

Cross-examination:

Can't remember when his attention was first called to the land in controversy unless it was time when Long brought in telegram from Betty Mann (signed Bill Jones) and told him the purport of it; didn't do anything about it until second telegram came from Betty; witness then agreed to go in with them and that Gem Oil Co. should attempt to get lease from Minnie; sent Long to Seattle for that purpose; Long brought Hanford back; doesn't remember that Long and Hanford had breakfast with him at his house, but supposed they did, inasmuch as Hanford said so. (R. 3882–83.)

Witness is man that got the lease from Hanford. Doesn't know, but no doubt was with Hanford practically all day; thinks he made the deed that day; agreed what they were to pay, provided Hanford accepted; agreed on $10,000, and witness felt he had it pretty well along that day.

At this time knew of litigation pending wherein Nancy claimed to be mother of Thomas Atkins and to be his heir, and that Gypsy Oil Co. was in possession of the land and claiming the title under a forged deed. (R. 3884.)

Long had the signature of Minnie on a slip of paper and they compared it with the roll when she drew her grass money in 1895 and believed it the signature of the same person. Long told witness that he had made some inquiries of Minnie while in Seattle. (R. 3885.)

They wanted Long to keep Hanford away from others who might run up the price for the lease. Long's duty "was to keep Hanford kiting around the country" so they could get the lease. (R. 3886.)

When Betty Mann returned from Seattle, witness had a conversation with her. Betty continued around the Gem Oil Co. office for quite a while. (R. 3887–88.)

Witness kept up to date on this matter until second $5,000; was paid after that didn't pay much attention to it because he was convinced there was a Tommy. Paid that money July 29, 1914, after Minnie had made statement at Kansas City and had been seen by and talked with some Leavenworth people. Rice told witness there was no question that they were all right. (R. 3888.) He had wanted to defer payment, second $5,000, until he was positive Minnie was identified by some of the Leavenworth witnesses. Asked if he didn't testify at receivership hearing that money was

paid after she had given her deposition at Tulsa, he admits that he did and that that testimony was correct. (R. 3897-98.)

Before Minnie testified at Sapulpa, witness had her at his house and had a number of persons come to identify her. (R. 3891.) He was satisfied of her identity, but when she testified at Sapulpa about the child being born at the Sisters' Hospital, and when Long hurried to hospital and found out that she had not been there, it disgusted him. Reason they had Long go to check hospital records was they didn't know whether Tommy was dead or alive—so Long went to check up her story. Asked why he didn't send to check records before, states that he doesn't think they knew about hospital before. (R. 3899.)

Doesn't recall when was the first time he heard the name Peterkin; Hanford went to Boston to interview Peterkin and reported to witness what Peterkin had told him. Witness insisted on Josey interviewing Peterkin because he wasn't satisfied with explanation he had gotten from Hanford. Remembers that he reported that Peterkin had said that Minnie had a child in Leavenworth. (R. 3894-96.)

At that time witness knew Dennis Jones was working for Bartlett and witness wanted to employ him. (R. 3894.)

About this time Sadie James came in and was brought to him by Long; made engagement to meet her at the park.

Q. Why was it that you didn't trade with her or talk with her in your office instead of waiting until that night at your park?

A. Why, because possibly I was busy, or possibly it was a better time to sit down and talk. It was in the summer time, it was warm, and there might be lots of reasons in regard to that. Maybe I wanted to say lots of things to her and didn't have time up there. I couldn't tell what was going to run through my mind at that time.

Sadie gave witness to understand that she could prove that Tommy was dead and buried, and he told her if she could do that she had a job right then. (R. 3896.)

Denies that he stated at receivership hearing that he knew Sadie's reputation at this time. Upon being confronted by testimony given on that hearing, he admits that his testimony then given is correct. In that he stated that he without questioning her knew of her character prior to time Long brought her in to him. (R. 3897.)

On the same day that Minnie testified at Tulsa, witness took a deed from her to this land. (Govt. Ex. A–63, R. 4744–48.) In this deed, dated October 22, 1914, Minnie conveyed all mineral rights in the land and also her royalty rights under the lease heretofore given by her (McNab lease); she warranted the title; in consideration of the deed Page agreed to pay $25 per month until the right of Minnie as against Nancy was established; not to exceed $10,000 to be paid; then $200 per month for five years, and then

$100 per month until death of Minnie. If Minnie died before the $10,000 is fully paid, then to her heirs shall be paid the remaining sum to make up the $10,000.

There was a condition that payments to Minnie should cease if Thomas Atkins, the son of Minnie, or the rightful heirs of Thomas should establish claim and title to the land. There was also a provision that should any suit be brought by United States, the Creek Nation, or Thomas Atkins or those claiming under him, then payments should be suspended until final judgment.

Asked why provision was put into contract relative Thomas Atkins or his heirs establishing title, witness is unable to state reason therefor. (R. 3898-99.)

MINNIE FOLK:

Born in the Creek country; father's name Thomas Atkins, mother Mary Jane Atkins; Lee Atkins is her brother, Nancy Atkins her sister; Lee older, Nancy younger, than witness; went to Carlisle Indian School; Betty Mann went with her to Carlisle; was "farmed out" for a while to family named Penrose near Philadelphia; went back to Carlisle and later went to Leavenworth as cook for George H. Hyde. (R. 3910.) While at Hyde's became pregnant; can not recall last name of father of child; first name was Lee; he was from Fort Leavenworth and was a coachman to some general; while pregnant witness went to work at Grodevants at Fort Leavenworth; Lee got her the place; worked at Grodevants as long

as she could and then left Grodevants and went to a colored woman named Granny Letcher, where child was born; named it Tommy Atkins after witness's father; stayed about three weeks at Granny's after child was born, then returned to Grodevants; came back every night from work to see child. Tommy was two or three years old when she left him and went to Fort Logan; had five children all told; Tommy was first one, then Robert Lee Peterkin, then Alice, Charlie, and Harvey.

Once wrote her uncle, John Davis, asking him to send some money for Tommy; no answer received; later at Fort Logan wrote again and he sent some money. (R. 3911-12.)

Witness went to the 1895 Creek payment and drew money for herself, Charlie, Harvey, and Thomas—about $57; doesn't know who got Nancy's and Ed Schrimpsher's money; while in Oklahoma on that trip, her brother Lee was shot and witness went to Checotah and stayed with him until his death; returned to Fort Logan with John Couch; when they arrived at Kansas City she remained in station; didn't see Sadie James on that trip. (R. 3913.)

Never had any talk with Sadie about robbing the Government of some money; never told Sadie witness had put up a job on Government and was trying to get away.

Sadie James was the first person who came to her at Seattle about this claim of Thomas. On the occasion of her first visit to her there, Sadie was excited; witness told Sadie she did not know her. Invited

Sadie into the house, and "she talked and wanted to know about my children." Told her she had had Tommy, but he was dead. Sadie said "that is all right we will make a Tommy"; told witness she was working for Mr. Bartlett and the Dawes Commission, Mr. Cook, and mentioned four men to her—can't remember who. Witness told her that she (Sadie) couldn't make a Tommy because he was dead. Sadie said "we are going to make a Tommy because I am working for the government now." (R. 3914.)

Remembers woman at Seattle by name of Mrs. DeLaval; met her at a dressmaker's; when witness's husband was sick and in hospital, Mrs. DeLaval came to witness's house and latter asked her to stay with her overnight; told Mrs. McComb that same day that Mrs. DeLaval was going to stay with her that night, and Mrs. McComb told witness that Mrs. DeLaval was "up to something." Mrs. DeLaval was at witness's house three or four times; didn't know dictagraph was in her house. (R. 3914–15.)

Remembers Montgomery's coming there and of signing her confession; asserts that she was intimidated when she signed it; nobody persuaded her to retract; she took it back because "I knew I was in the wrong." (R. 3916.)

The reason she testified to having Tommy at sisters' hospital was because she didn't want anybody to know she had had him at Granny Letcher's.

She tells now for the first time who was father of Tommy, because it was charged that the father was a colored man.

Walter Banks, Sam Nash, and Jim Mayo were at Granny's when witness was there.

Witness sometimes went around with a woman—a fortune teller—used to visit Lange's drug store with her; remembers purchasing a pocketbook there; she thinks she was pregnant then. (R. 3917–18.)

When she left Granny's witness asked latter to keep Tommy because she couldn't get work with him.

After she went to Seattle, she kept secret her past life, didn't want anyone there to know of it; didn't write to anybody in Oklahoma;

Never knew there was such a thing as the Dawes Commission until this case came up. (R. 3918–19.)

Cross-examination:

Was at Hydes about two or three weeks before she became acquainted with Lee—but she had seen him on the streets (R. 3920).

This is fifth time she has told her story in court. First time was in Sapulpa in July, 1914, in District Court (state court); next gave deposition in October, 1914, in Rice & Lyons office in Tulsa, to be used in state court of Creek County at Sapulpa; then in United States District Court at receivership hearing in this case; then in deposition taken at Seattle by Examiner Penick for use in this court; finally the present testimony. (R. 3921.)

Out of court, made statements as follows:

(1) At Seattle for Long and Hanford;

(2) At Kansas City in hotel with Page, Rice, Long, and Hanford present;

(3) Confession given when Montgomery saw her.

In all these statements and each time she testified no one talked to her about case who she did not think was friendly to her interests, except Montgomery. (R. 3922.)

Had never been to Leavenworth until she left Carlisle. (R. 3922.) Went with Lee ("ran around with him") until she went out to Fort Leavenworth; knew his last name at that time, but can't recall it now; she and Lee were sweethearts—he was her "steady"—until she went to the Fort, which is about three miles from Leavenworth; would go out with him frequently; in this time she never kept company with negro men and never would go to public places with negro men as her escort; has no negro blood that she knows of; can't speak Indian language sufficiently to carry on conversation; never kept company with negro men "up there" (Leavenworth); never had any relatives of negro blood that she knows of. *Thinks* Lee was coachman for Col. Blunt at the Fort, but *knows* it was for *some* Colonel.

Worked for Hyde about three or four months; knew other young men around town, but kept company only with Lee who came to see her every night. (R. 3923–24.)

Went directly from Hyde's to Grodevant's at the Fort; didn't stay in town (Leavenworth) any part of the time; didn't have any women associates in Leavenworth; doesn't recall running errands for any woman there, if she did she doesn't remember (R. 3924–25). Quit Lee about two months after she

went to Grodevants because she saw some soldiers she liked better. (R. 3926.)

Next went with soldier named Oliver; can't remember his given name; kept company with him a couple of weeks; doesn't remember who her next sweetheart was; didn't take up with Peterkin until she was working for Stafford; then says she doesn't remember just when it was, but it must have been about a year after she quit Oliver and after she quit working for Staffords. Had Robert Lee Peterkin by him. (R. 3926–27.)

It was over ten years since she left Fort Logan, Colorado, when she went to Seattle; during that period she had never heard from Fort Logan. (R. 3928.)

Denies having known Sadie James prior to latter's visit to her in Seattle; denies having known her at Leavenworth and when she worked across the street from Hydes. Denies that she testified at Sapulpa in July, 1914, that she knew Sadie when the latter lived on the corner of the street from Hydes. (R. 3928–29.)

Learned from Sadie at time of her visit at Seattle that she was working for Bartlett and that he would pay witness $4,000 for the land. Sadie said they would make a Tommy; would send to New York or some place and get a Tommy. Sadie told witness she had seen Mary Hamilton in Denver, who had told her that Tommy was buried at Fort Logan; witness told Sadie boy not buried there, but that he

died in Leavenworth. Witness told Long to see Mary Hamilton. (R. 3930–31.)

Sadie told witness not to deal with anyone except Bartlett and her; witness declared she would deal with person she knew she was right with; that she had a Tommy, and that it didn't look right to her the way Sadie was going on, not wanting her to have anything to do with Long. (R. 3931.)

Sadie said that they would make a Tommy because witness told her that Tommy was dead (R. 3933); witness understood at the time that Tommy would have to be dead in order for her to get land (R. 3934).

Witness agreed to sell the land (R. 3934); Sadie returned the next day and told witness she couldn't get into communication with Bartlett (R. 3935). This was before Long came. (R. 3937.)

It was understood between witness and Sadie that former was to tell the people when they came that she had a Tommy Atkins. (R. 3936.)

Sadie first came on a Monday and was there about three days before Long came. (R. 3936.) When Long came Sadie didn't come in, she was walking up and down the sidewalk with the detectives; had not known Long before or any of the people he was representing. Capt. McNab and possibly Hanford were there (R. 3937); Long asked her if she was Minnie Atkins and witness said she was; that was all that Long asked and he didn't talk with her any more; talked with McNab. Sadie didn't come to see her after Long had been there; witness went up to where

Sadie was on the sidewalk and the latter asked who was in the house; when told it was Long she told witness not to have any dealings with him, that she wanted her to deal with Bartlett; witness said she was going to deal with man that was right with her; thought Long was that man, although he had only said to her "Are you Minnie Atkins?" (R. 3938-39.)

The Sunday after Long had been there Sadie came and stayed two hours with witness and talked about making the deal, urging her not to trade with Long but with Bartlett; told witness Betty Mann was in town helping her to locate witness, that both were working for Bartlett. (R. 3939.) Thinks Long mentioned Betty's name in reference to telling how he located witness.

Hanford and McNab saw her between time Long was there and the Sunday Sadie was there; had not met Hanford before; witness didn't have any lawyer, because at that time witness wanted to deal with Bartlett; this was after Long had been to see her. (R. 3940.)

Hanford told her he was going to Tulsa with Long to look after her land and see she wasn't robbed out of it. Upon his return he did not tell witness how much he had been offered for it, nor did she ask him. Hanford said it was pretty valuable land; doesn't remember now what Hanford told her about his trip to Tulsa. (R. 3940-41.)

Long and Hanford interviewed witness to get the details about Thomas Atkins; "didn't exactly tell

him (Long) all that was the truth because I didn't want anybody to know about my business"; didn't want to tell him where child was born; wanted to conceal everything if she could; *did not* want to conceal at that time the season of the year when Tommy was born and told him Tommy was born in the summer time. (R. 3941.)

Didn't want them to know how she got him but it didn't make any difference to her at that time whether she got Tommy at Hydes or Grodevants or Staffords or where she got him, just so they didn't know where she got him. Denies that she told Long that she had to quit Staffords because she was pregnant with Tommy; didn't tell him that last time she heard from Tommy was in 1899 when he was sick. Did tell him that Tommy was born in 1886 or 1887 at the Sisters Hospital, but he wasn't, in fact, born at the hospital—"I just said that to him." (R. 3942.) Did tell him what she thought was the truth about the year when Tommy was born.

Long told her that if Tommy was dead, she would own the land.

Didn't tell Long that there was a woman in Denver who would remember Tommy's custodian and that Tommy died in 1900 or 1901—doesn't know when Tommy died. (R. 3943.)

Told Long names of people in Leavenworth she knew, but can not tell whether she told him at that time at Seattle or in Leavenworth when she went

there later; also told them that she used to go to Granny's. (R. 3944–45.)

Knew Granny well; doesn't know whether she could read or write, but got a letter from her telling her Tommy was dead.

Told Long she didn't know with whom she left her child because she didn't want to tell any of them where she had left him. Told Long, however, that she gave birth to Tommy at Granny's. (R. 3945.) Asked why, if she had told that to Long, she had stated on the stand at Sapulpa that Tommy was born at Sisters Hospital, answers because she wanted to hide it. Long was mistaken if he telegraphed his company that she didn't remember name, etc., of woman with whom she had left Tommy. (R. 3946.)

Told Long and several others about all the children she had had. Is questioned regarding her testimony at Sapulpa, where she stated that she was the mother of Thomas, Alice, Harvey, and Charlie, and that she never gave birth to another child; says she doesn't remember the question and answer there given; there did not exist in her mind then any reason why she should conceal the birth of any child she had had (R. 3946); she wanted to answer truthfully. Didn't tell Long about Robert Lee Peterkin—can give no reason for not doing so; didn't tell Hanford about him either; doesn't remember month or year Robert Lee was born; was buried in Leavenworth.

Now states that she didn't tell Long that Tommy was buried at Leavenworth; now says that she did tell Hanford and Long on their second visit at

Seattle that she didn't remember name or description of woman with whom Tommy was left; told them he was left with colored woman, but didn't tell them who; was mistaken when she testified previously that she did give name.

States now she didn't leave Staffords to have Tommy. Admits that at Sapulpa she testified that she went from Carlisle School to Hydes and worked there three months; then worked at Ft. Leavenworth for Grodevant for 1½ years; then at Staffords for one year, leaving Staffords because she was with a baby by name of Tommy Atkins who was born at the Sisters Hospital in Leavenworth.

Admits that her Sapulpa testimony on this point is the same as what she told Long (R. 3948–49). Admits that she did have Robert Lee Peterkin immediately after leaving Staffords.

Reason why she stated she had given birth to Tommy at Sisters Hospital was because she had once been there as a patient. When she testified at Sapulpa about having Tommy at hospital she knew it was false, but never had told any other story (R. 3949–50).

Before giving the testimony at Sapulpa, she had never told anybody that this child Tommy was born at Granny Letcher's; she was concealing from everybody the place of his birth. (R. 3950.)

After Sapulpa testimony, went to Leavenworth with Hanford who looked up records of Sisters Hospital. Hanford told her he was going there to see if she had told the truth; doesn't remember when he

told her that; asked why she didn't tell him she hadn't had child there, says "I just didn't tell him." (R. 3951.)

After she came back to Tulsa from Sapulpa, witness gave Hanford some information about Peterkin—told him about Peterkin being her sweetheart, doesn't remember what else (R. 3952). When he returned from interviewing Peterkin, Hanford asked witness why she had told him that Peterkin was Tommy's father; she told him "I just said it to be saying." Witness had told Hanford that at Tulsa; told it just to stall him off. (R. 3953.)

When she went to Leavenworth with Hanford at time he went to look at hospital records, he drove witness around so she could show where Granny lived; had told him about Granny after they had been to the hospital. (R. 3953.)

When she signed lease she didn't get her money right away, the reason she thinks was because she "didn't tell right out everything"; that was before she had told any story in court. (R. 3955.)

When Hanford returned from Oklahoma he told witness he had got $10,000 for the lease; witness asked for her money, and he said he would give it to her, but didn't say when.

Q. But he didn't give it to you at that time; you hadn't told the story, is that it?

A. I guess that is it.

Q. They were waiting for you to tell your story before they gave you any money; that is a fact, isn't it?

A. Yes. (R. 3956.)

Long never got any information from witness upon which to predicate statements that father of this boy was a negro. Witness never cohabited with negro in her life. Witness would never refer to negroes as a "lady."

Attention is then called to her testimony at Sapulpa, in which she stated that after she left the Sisters hospital she took Tommy to a lady in Leavenworth to care for him by the day and she went to work, always returning to him after work, and in which she constantly referred to the person with whom she left Tommy as a "lady." (R. 8957-58.)

Can't say if Granny Letcher was married in 1908; there were three children there, Walter Banks, Sam Nash, and Jim Mayo.

Her attention is then drawn to her testimony at Sapulpa wherein she stated that one with whom she left Tommy had a husband and did not have any children. Witness states she does not remember saying that. (R. 8959.)

Asked if, on trip with Hanford from Seattle to Kansas City, Hanford had accused her of telling lies at Sapulpa and that she would have to straighten it up and change that story; denies any such occurrence. (R. 8960.)

Hanford told her reason he desired her to make trip to Leavenworth was to have her tell him the exact place where she had Tommy. Long took her around and she met people there—they knew her just as soon as they saw her. Then they went to Kansas City and had witness make statement (Long, Hanford,

Page, Josey, and Rice present) when they asked witness whom she remembered at Leavenworth, the only ones she could mention without suggestion was Mary Hamilton and Grandma Spain.

Q. And they would suggest to you, why, you knew Rube Smith, and then you would say, yes, is that right?

A. Yes; I knew him because he used to hang around Letcher's all the time.

Witness claimed to know Crilly, but admits that at Kansas City she said in her statement that she couldn't think of name of the livery stable near Granny's. (R. 3963.)

Witness is asked about testimony given before Examiner Penick, wherein she stated that she and Ida Foster were running around together at the time Tommy was conceived, and her statement in Kansas City wherein she said that Ida Foster was the girl Mr. Smith said she went around with; that she might have but didn't remember and didn't remember her then.

Asked if it wasn't a fact that Mary Smith didn't recognize her at Leavenworth, witness states that she (Mary) said she did. Is then confronted with her statement at Kansas City where she stated that Mary failed to recognize her. (R. 3963–65.)

Witness, in answer to question, says nothing happened between the statement in Kansas City and the testimony later that made her remember Ida better. (R. 3965.)

Referred to statement at Kansas City wherein she said that she didn't know much about Rube Smith. (R. 3965.)

Witness's attention called to fact that she had told Long that child was born in summer time, and at Kansas City said it was in winter; in deposition before Penick she stated it was getting summer but cold yet. Now says it was in the summer, towards winter but still in the summer. (R. 3966–67.)

Witness nursed Tommy at the breast when she was in Leavenworth as long as she was around there—about six months. Doesn't know whether she had relations with men while nursing Tommy; says she doesn't remember averring in the Kansas City statement that she did *not*. (R. 3967.)

Admits that at Kansas City and in deposition at Rice & Lyons office October, 1914, she stated that first child was boy, Thomas Atkins; second child, a girl, Alice, and that Alice was born at Denver, Colorado. (R. 3968.)

Witness is referred to statement made at Kansas City after Sapulpa hearing, when she was asked why she testified that she left Staffords and went to Sisters Hospital to have a baby, and at which time she said she didn't know why she made such a statement "You know how they get at you"—"I didn't want them to know right out" what kind of a place Granny's was. At that time (Kansas City) this comment was made. Q. Well, that is what you must say because it is difficult to explain

that testimony, and I want you to tell the reason why you testified that way at Sapulpa. (R. 3968.)

Bought trinkets, beads, breastpins, etc., for herself when in Leavenworth in 1884 but cannot state where she bought them. (R. 3969.)

Always knew who the father of Tommy was, but this is the first time she has ever named him. Denies that at Kansas City certain stated questions were asked and answers given to the effect that after she left Hydes she got Tommy, that she was then "around town"; had no particular sweetheart, didn't want any; about two men were going with her particularly when she left Hydes but she didn't remember their names. (R. 3970.)

Witness states that she told them at Kansas City that Mary Hamilton knew nothing about Tommy, but denies she told Long at Seattle previous to that that Mary could tell him where and with whom she left him.

Doesn't remember that she stated at Kansas City that up to the time she made first trip back to Oklahoma (1895) she had not received any letter from anybody about Tommy.

Attention was called to deposition at Seattle wherein she said the letter telling her Tommy was dead was one from her sister's husband enclosing deed for her to sign. Letter was burned later. (R. 3971.)

After making that statement at Kansas City, she refreshed her recollection and then told them before that statement was finished that she received a letter

in Detroit, Michigan, from a friend stating Tommy was dead. (R. 3972–73.)

Was in Oklahoma about a year when she went there in 1895; testified at Sapulpa that Tommy was about one or one and a half years old when she left Leavenworth (R. 3973); left Leavenworth in early part of 1888; stated at receivership hearing Tommy was about two years old when she left Leavenworth, and now states that he was two or three years old. Explains discrepancies by saying that she studied it out more and more. Admits that she has been talked to about it. (R. 3974.)

States that for about three weeks before baby was born she didn't work; doesn't remember that she stated at Kansas City that it was two or three months, but admits that she testified it was *two* months, at Seattle. Doesn't remember where she was staying during those two months—"down to Granny's sometimes and around." Was in bed about two weeks, when confined; nursed child for about six months. (R. 3975.)

When she wasn't there they had a bottle for him. Admits this is first time she has sworn about the bottle and that at Kansas City and at Seattle she said she nursed child at the breast.

Asked if during two months before birth of child she didn't stay at Mrs. Edwards, witness states "I didn't stay there, I was just in and out." (R. 3976.)

Relates incidents occurring at Leavenworth when attempt was made to have her identify Henry

Carter as Tommy. They wanted to frame up a colored child. She wouldn't let them bring him to see her. Had a fuss with them and was so mad and excited she became ill. Long told her somebody was trying to frame up a colored boy on her. (R. 3977.)

Went to hospital and wouldn't give her deposition at Leavenworth because they brought that nigger story upon her.

Hanford came to see her and gave her the check for $5,000 which she later put on time deposit in bank at Tulsa; left it there on deposit about four months. Long suggested that she put money in that bank. (R. 3979.)

After paying her the money, they took witness to Tulsa and later to Page's home—nurse came with her—witness paid none of the expenses of nurse. (R. 3978.)

Reference is made to testimony given before Examiner Penick at Seattle that witness was carrying Tommy when at Grodevants, and to receivership hearing where she swore she had him before she went to Grodevants. (Denies she gave that testimony in receivership hearing but admits she might have made same statement in deposition at Tulsa.) Nothing happened to refresh her recollection; "I just knew all the time." (R. 3980–81.)

Didn't sleep at Granny's for a period of a year and denies she testified to that effect in receivership hearing. (R. 3981.)

Dr. McCormick attended her at childbirth. Admits she testified at Sapulpa that she didn't know who the doctor was (R. 3981). Granny suggested him—that was first witness had heard of him—thinks he came in the evening. (R. 3982.)

It was a little over three weeks after Tommy came when she went back to Fort and to work at Grodevants; went down to see Tommy every night from Fort in a bus. Would leave Grodevants as soon as her work was done, about half past 7 or 8 o'clock, depending on time Frank Grodevant would get there, as he was always late and didn't eat with family. She had to wait on him. Would stay with Tommy until last bus left for Fort about 12.30. Can't say how long she continued going up and down that way. Would nurse baby when she made those trips. Bus fare 10 cents each way.

Denies that she stayed at Granny's a year, although she so stated in statement in Kansas City (R. 3982–83). Also admits that in Tulsa deposition she said that she stayed in Leavenworth a year after Tommy was born and *then* went to the post. (R. 3983.)

States that she doesn't know who went for doctor or that he got any pay (R. 3984), although she admits stating in Kansas City that Rube Smith went for doctor, and she got the money from him to pay doctor; says she was only guessing at that. Never went to Dr. McCormick's office on any matter. (R. 3985.)

Last time she saw Tommy was morning of the day the evening of which she left for Fort Logan; he was

playing around house (Granny's). Thinks Tommy could say a few words then. (R. 3986–87.)

Gave deed to Page on day she gave her deposition in Tulsa, "because I was in the right" (R. 3987); didn't advise with anyone before signing it; can't explain why provisions were put into it regarding possibility of Thomas Atkins or his rightful heirs successfully maintaining title to land, and that upon filing of suit by United States, Creek Nation, etc., payments provided for should stop. Didn't ask anybody why they were put in there. (R. 3988.)

Didn't meet Peterkin until she was working for Staffords. Was in Leavenworth pretty near four years; worked for Hyde three months; Grodevants, 1½ years; Staffords, about a year; then for a rich Jew; doesn't know how long she worked for him; when she left him she went to Denver (Fort Logan). (R. 3988–89.)

Worked all day at Hydes and Grodevants and Staffords, except would have every afternoon off at Staffords; would get through half past one or 2 p. m. and go down town, returning at half past four or 5 p. m. to prepare supper. (R. 3990.)

While at Fort didn't have breast pump; relieved her breasts during day by pumping them with her hands. (R. 3991.)

States she does not remember testifying at Sapulpa that she hadn't named Tommy Atkins at time 1895 payment and that she had her uncle put him on the roll as Tommy Atkins; says now she

doesn't know whether her uncle put him on or not; doesn't know who put him on. Admits, however, that in her Seattle testimony she testified substantially the same as in her Sapulpa testimony on this point. (R. 3993.)

(It is agreed between counsel that questions and answers read to witness as testimony taken in either Sapulpa hearing, Tulsa deposition, receivership hearing, deposition before Penick (Seattle), and in statement made in Kansas City, will be admitted in evidence as being such testimony or statement. (R. 3994–95.)

Deposition of Minnie Atkins, given at Seattle, here introduced as follows:

Had Tommy put on 1895 Creek tribal roll as Thomas Atkins—that was not my name; had not named Tommy Atkins, and her uncle, John Davis, put him on as Tommy Atkins. (R. 3997.)

At the time she drew the money on the 1895 pay roll she had had 5 children—Thomas, Harvey, Charlie, Mabel, or Alice, who had died, and Robert Lee Peterkin, who lived a week or ten days and whom she called a premature birth (R. 4004–05); went from Carlisle to Hydes at Leavenworth and stayed there 3 months or a little over; then to Grodevants at the Fort where she was for 2 or 3 months; then to Staffords; got Tommy at Hydes (R. 4008–09).

Knew lots of men at Leavenworth; sometimes went around with Crilly, who runs the livery

stable; can't remember name of others; knows who father of Tommy was; won't tell who. (R. 4010–11.) Met men at a hotel (white hotel), name of which she does not recall, nor the proprietor of it; also at Granny Letcher's; never consorted with negro men. (R. 4012.)

Was in bed about two weeks at the time she gave birth to Tommy; can't tell the name of the doctor who attended her; Mrs. Witt washed and dressed child (R. 4013). Didn't run around much with Ida Foster in Leavenworth, but went with her more than with anybody else (R. 4018). When at Hydes didn't stay there all the time, sometimes would go to a hotel and to Granny's and stay all night and carouse with men (R. 4019).

Had Tommy when she was working for Hyde; quit work there to have him (R. 4020); then says she gave birth to him after she left Grodevants, where she worked up to within 2 months of his birth; after Tommy was born she staid around Leavenworth for about a year so she could go to Granny's and nurse him; Tommy was about 2 years old when she left Leavenworth for Ft. Logan; left Tommy with Granny; didn't regard it as any humiliation to associate with Granny (R. 4021); didn't send Granny any money for Tommy's support; didn't have to send (R. 4022).

Tommy was born on Seneca Street; it was between warm and cold—getting summer but still cold; knew Granny when she lived on Cherokee

Street; before she was on Seneca "we" (girls) used to go there. (R. 4035.)

Granny's house on Seneca Street was good-sized house, painted white; four rooms down stairs, two upstairs; porch in front running around the side; Thomas was born in one of the upstairs rooms. (R. 4036–37.)

Didn't work steady for Grodevant or for Stafford; doesn't remember how long a time she would be away from Grodevants or Staffords. (R. 4039.)

Letter telling that Thomas was dead and inclosing deed for her to sign was received just before she went to Fort Lawton—Seattle. (R. 4039.)

Didn't have a child named *Nancy* born at post hospital at Fort Logan, Colorado; didn't die at the hospital. It was *Alice* who died there at post but not at the hospital; buried in post cemetery. (R. 4041.)

Cross-examination:

Witness is asked concerning statement made in Kansas City, and, to shorten examination, it was agreed that Kansas City statement be admitted in evidence as what she stated then. (R. 4043.)

(The statement is in record, pages 4044–84; was taken at office of George William Snyder, at Kansas City, Missouri, September 29 and 30, 1914. Present: Messrs. Rice, Long, Hanford, and Josey.)

In that she made the following statement:

Sarah Crowell (Betty Mann) was one of the girls who went to Carlisle with her from Oklahoma. Has

not seen her since. (R. 4047.) Women she knew at Leavenworth were Mary Hamilton and Grandma Spain. (R. 4050.)

Was at Hydes three months—when she went from there was "knocking around and stayed a good deal at Grandma Letcher's"; worked for a few weeks at a rich Jew's before she went to Letcher's. Granny lived on Seneca Street; there was a livery stable near the place; can't think of name. Q. Was it Crilly? A. Some such name as that. There was a grocery store in the neighborhood run by Rube Smith. (R. 4051.)

Couldn't say how many rooms in house (Granny's). (R. 4052.)

Doesn't place Ida Foster; might have gone around with her, but doesn't remember.

Remembers Bill Grape, who brought coal and wood to Granny's; doesn't know much about Rube Smith; Granny used to get groceries there; sometimes witness would go and get them (at Rube's). Granny had two boys at her house, Sam Nash, a one-armed boy, and Walter (Banks. R. 4053.)

Was at Granny's, off and on, about three months before child born; got with the child after she left Hydes; when she left Hydes she had no particular sweetheart or lover—didn't want any—was just around—two men going with her; doesn't remember their names.

Doesn't remember name of doctor who attended her at birth—Rube Smith went for him. (R. 4054.)

Borrowed the money from Rube Smith to pay the doctor. Tommy born in winter of 1885.

During time she was carrying child she would go to Letcher's, "off and on," most of her time. (R. 4055.) Will not tell name of father of Thomas. (R. 4057.)

Stayed around in Leavenworth about a year after Tommy was born. During time she was nursing Tommy no man came to see her. (R. 4057.)

Rube Smith saw Tommy around house while witness was at Granny's—he came to deliver groceries—Rube never saw witness in bed with child. (R. 4058.) Now remembers doctor's name as John McCormick. (R. 4059.) First worked for Grodevant at the fort, then for Stafford. Peterkin went with her when she worked for Stafford. Harrison was her steady company at Fort Logan; went with Peterkin from Leavenworth to Fort Logan. (R. 4060.)

Second child, Alice (Mabel), was born at Logan; lived about a year; then she went with Harrison after Peterkin was ordered to Texas. Went back to Territory (Oklahoma) because her brother wrote for her to come, he wanted to see her. She hadn't written to him. He didn't say anything in letter about Creek payment—she found out about that after she got there. (R. 4060–61.)

Met Sam Brown at the payment at Okmulgee; never saw him before that; supposed her brother told Sam who she was. (R. 4064.) Did not tell her uncle, John Davis, about Tommy. (R. 4065.)

Sam Brown had never seen her children; she just told him what children she had; he didn't ask many questions. (R. 4066.)

Never wrote any letters to anybody in Oklahoma about Tommy; got a letter while in Detroit, Michigan, saying Tommy was dead; before that, received letter asking her to send some money to take care of Tommy; doesn't know from whom letters were. (R. 4072.)

[September 30, 1914, further interrogations.]

Didn't work at Stafford's before Tommy was born. (R. 4073.) Admits testifying at Sapulpa that she left Stafford's to have a baby, Thomas Atkins, and went to Sisters Hospital; says that wasn't true; didn't "want them to know about Granny Letcher's." (R. 4074.)

Now states that when she went to Muskogee she told her uncle John Davis about Tommy and Alice—told him she had left Tommy in Leavenworth, but didn't mention the place. (R. 4075.)

First she knew of allotment to Tommy and that land was valuable was when Sadie James told her when she was in Seattle. (R. 4080.)

First letter asking for money she got while at Detroit (Fort Wayne), and was, she thinks, from Granny Letcher. About a year later received a letter that Granny was dead. A year after the second letter she received another stating Tommy was dead. Then says first letter was from Granny and second announced death of Tommy. (R. 4081.) It was

about a year before (1909) she left Fort Wayne for Vancouver that she heard Tommy was dead. (R. 6083.)

When she went to Muskogee from Fort Logan, she didn't go to Leavenworth to see Tommy because she promised herself she wouldn't go back there because of rough character of the house. (R. 6092.)

Testimony of Minnie Atkins before court in suppressed.

Cross-examination:

Never told her people in Oklahoma about Tommy, because she didn't want them to know. (R. 6102.)

HARRY R. FOLK:

Husband of Minnie Folk (Atkins); Minnie received a letter at Fort Harrison, Montana; she did not tell witness what it contained; looked over her shoulder saw papers which appeared to witness like a surveyor's map.

Was at Spokane on June 16, 1916, on temporary duty with 14th Inf. Band; Long and Stanford came to see him with regard to the land in controversy; had a conference with them at which Lt. Winton, Capt. Wright and Maj. Stokes were present; was satisfied with arrangement made. (R. 6103-06.)

GEORGE KEOGH:

Employed by Page and Penny in drilling wells on Thomas Atkins' allotment; has statement showing expenditures made prior to bringing of suit. [Court ruled that that statement may be offered when Curtis

the bookkeeper is put on stand, he having prepared it.]

Built five steel tanks on land in winter 1914–15; cost about $14,500 apiece. (R. 4158–60.)

Cross-examination:

Witness drilled first well on that land that was drilled for Page, "spudded" in November 8, 1914, completed January 15, 1915; when first moved onto land there was a producing well on it of the Gypsy Oil Co. Mr. Page ordered him to move the rig onto the land. (R. 4160–61.)

Redirect:

Cost about $10,000 to drill each well. (R. 4161.)

Recross-examination:

Steel tanks were not put on this property. (R. 4162.)

E. O. Curtis:

Auditor for Page; has book which treats of Tommy Atkins lease; has statement prepared from books showing detailed account of expenditures commencing in August, 1914, and ending January, 1915.

[Statement is received in evidence (Def.) Minnie Atkins, Ex. B–22 and 23. R. 4950–58.] (R. 4169.)

Cross-examination:

This testimony is on the matter of expenditures made by Page and others (Gem Oil Co.) on the lease covering the Atkins allotment, how they were kept on the books, etc.; the purpose of this testimony and the other given by this witness is to show good faith

on part of Page et al., and upon the part of the Government in its cross-examination to show that but little actual money was paid out, although contracts were entered into until production was had; that is, that liabilities were met out of proceeds of production. (R. 4170–74.)

Deposition of MIKE STANTON, a witness produced by the Government, is offered in evidence by Minnie Atkins et al.:

Has lived in Leavenworth and Ft. Leavenworth 57 years; moved from Fort last time in 1886; knew Indian Minnie while at the Fort; first saw her on corner Shawnee and Main Streets in 1867 or '68; saw her again at Fort in 1869 on one of the corners; saw her for about a year; was working on grading of Fort extension and saw her with a "baby buggy"; she was working for some officer. Last saw her in 1870.

Knew Indian Mary at the reservation; had been told to have her run off reservation if she came around there; last saw her about 1880; Indian Mary was found dead in a ditch about 1888. (R. 4175–77.)

CHENEY TRENT:

Lives ten miles west of Wagoner, Oklahoma; is Creek citizen; father's name Dick Atkins; grandfather's name Thomas Atkins; he is dead; had a brother, Thomas Atkins, who died the year the filing commenced, aged 13 years; brother lived about a mile from her with her father; saw him every day or two up till his death.

Nancy Atkins visited her father's house three or four times a year; Nancy then living in Wagoner; Thomas often in Wagoner with Nancy; he would go there driving wagon for his father, who furnished wood to town.

Judge John R. Thomas and his partner, Grant Foreman, represented witness in matter of her enrollment. (R 4179–81).

Cross-examination:

Thomas Atkins was half brother; same father as witness. (R. 4181.)

Witness often went to Wagoner on wagon with her father, would see Nancy at hotel and at Aunt Betsy Birney's; never saw any children with her at hotel; sometimes would see her on the street. (R. 4185.) Brother Thomas would be along on these trips—father ran two wagons, Thomas would drive one. Thomas was about 11 years old when witness first knew of Nancy being at Wagoner. (R. 4186.)

None of the members of her family were enrolled as Euchees; they drew their payments in Arkansas Town, a colored town. (R. 4188–89.)

MARY A. SMITH, witness for Henry Carter:

Saw Minnie a couple of years ago—recognized her positively and Minnie recognized her—but not until witness had had a talk with her. (R. 4201–05.)

Cross-examination by Mr. Stuart:

Long was with Minnie when witness saw and recognized her two years ago; Granny Letcher had told her baby was dead; scar was pink at first, then turned white. (R. 4205–06.)

Cross-examination by Government:

Sadie James first called this matter to witness's attention; about a month after that Mr. Josey talked with her; then not very long until Long talked with her—these talked to her before she saw Minnie. (R. 4206–07.)

Saw Minnie but once at Granny's previous to birth of child; saw her maybe once every two weeks thereafter; supposed she was staying there; saw her there two months altogether; doesn't know where in town Minnie worked after child was born and before going to Fort. (R. 4209.)

Denies that after testifying in Leavenworth she told Mr. Allen and Mr. Cook (government representatives), when they came to her house in 1915, that the woman she saw at Granny Letcher's couldn't be the same Indian Minnie she saw later; and denies that she told them that Long suggested to her not to say anything about scar on boy's back; insists that she testified about scar at Leavenworth. (R. 4210.)

Granny lived on Seneca Street some 2 or 3 years when witness saw Minnie there, so witness testified in 1914; doesn't know how long now. (R. 4210.)

Denies that she stated in testimony at Leavenworth in 1914 that when Tommy was 4 or 5 years old he looked more like a colored boy than he did an Indian. [It is admitted by counsel that questions and answers read to witness as her testimony on point at

Leavenworth are correctly read by examining counsel. R. 4212–13.] Admits that she talked to Long shortly before she testified at Leavenworth. (R. 4213.)

Explains her Leavenworth testimony to the effect that she lived next door to Granny Letcher by saying that it was not at the time of birth of child but years later. (R. 4214.)

Admits telling Government representatives (Allen and Cook) that the boy she saw with a woman at Granny's is now called Henry Carter. (R. 4215.)

At meeting when witness and Minnie recognized each other Long introduced them; "said this is Mrs. Smith and this is Minnie." (R. 4216.)

Henry Carter stands up in rear of court room. Witness states she is positively sure he is the boy she saw at Granny's. Last saw him when he was 13 years old; knew of some one coming in from country and taking boy out. (R. 4217.)

Her boy, "Snipe" Smith, two years older than Tommy, never played with latter—lived too far away—she didn't allow her boy to play in the streets; he was too young. (R. 4217–18.)

Tommy left Granny's when four or five years old. Saw him when 13 years on street. (R. 4218.)

Cross-examination:

Is positive that she told about scar in testimony at Leavenworth. (R. 4221.)

ANDERSON CHILDERS:

Lives northwest of Wagoner, Oklahoma; a Creek citizen; lived in and around Wagoner 25 years; knows

Nancy Atkins; has seen Minnie Atkins; Nancy and Minnie are sisters; Nancy Atkins first moved to Wagoner about 1891 or 1892; witness would see her there average of once a week; knew Dick Atkins and his son Thomas Atkins, whose mother was Sallie Atkins; would see Dick and Thomas in Wagoner at frequent intervals; Thomas was five or six years old when witness first saw him in about 1890; Thomas died about 1898; saw this Thomas Atkins in Wagoner with Nancy Atkins twice at Davis & Jones store; Thomas then 7 or 8 years old; saw Nancy in Wagoner with Minnie's children, Charlie and Harvey; saw these two frequently about the same time he saw Thomas there about 1892 or '93; saw Thomas continuously in and around Wagoner with his father until his death. (R. 4291–93.)

Cross-examination:

Knew Dick Atkins' family well; there was a Mary Atkins (Wilson); Nancy Atkins (now Tabor); Susie Atkins and Thomas Atkins; Thomas was about 12 or 13 when he died (R. 4294). [Govt. Ex. A–114 (R. 4836–38) is received in evidence, being copy of letter of Acting Commissioner of Indian Affairs to Secretary of the Interior relative enrollment of certain members of Richard Atkins' family, and Secretary of Interior's letter to Commissioner to Five Civilized Tribes, approving his decision.]

Knew Richard Atkins, father of Cheney Trent; familiar with contest brought against enrollment of his family wherein it was contended that he was not the original Dick Atkins. (R. 4296.)

C. LIPSCOMB:

Had a talk few days ago with Malcolm, in which latter stated that he had a chance to make $500 as a witness in this case, but it was too risky. (R. 4612.)

Cross-examination:

Malcolm didn't say who was making that proposition to him (R. 4612); never told anything about conversation to anyone until Long called him up and asked him about it (R. 4614).

F. K. TAYLOR:

Has been connected with police force of Leavenworth in different capacities; testifies as to practice in making arrests upon request of sheriff, that if arrest were made and prisoner put in city jail, the arrest would not be docketed on the regular police court docket. (R. 4616–18.)

Cross-examination:

It might be recorded on police blotter; has not made any search through dockets for name Thomas Atkins. (R. 4618.)

WILLIAM A. DOIDGE:

On police force of Leavenworth since February 4, 1897; knows Pat De Laney, who went on police force for second time in February 8, 1897; prepared, as day sergeant and captain, docket sent to police court for cases to come up before that court.

If, when preparing docket, a case was presented where complaint had issued from justice court and been turned over to sheriff, and the chief of police had given order to pick up the man and he had been

arrested and put in jail to be held for sheriff, he would not put that down on docket. (R. 4620.)

Knew a boy in Leavenworth known as Tommy Atkins, son of Indian Minnie, and knew Tommy York. (R. 4620–21.)

[Def. Ex. B–27, photo of Tommy York (R. 4959), admitted in evidence to rebut statement that York looked like an Indian. R. 4621.]

Knew Tommy York since he was a baby; knew Tommy Atkins about two or three years. (R. 4623.)

Cross-examination:

Doesn't know where Tommy Atkins came from or went to; understood he was Indian Minnie's boy; didn't know her personally. (R. 4623.)

Requested by Pomp Graham and Mr. Bonds to testify; is to be paid whatever is reasonable and expenses for being witness. (R. 4625.)

Looked through records at police headquarters; couldn't find anything relating to Thomas Atkins. (R. 4626.)

Knew Tommy Atkins in '96 or '97; was about 11 or 12 years old. (R. 4628.)

[Police records showing arrest and conviction of Tommy York in city court of Leavenworth is admitted in evidence. R. 4632.]

[Frank B. Long and Charles Page (For Minnie Atkins et al.) both state that they never talked with Malcolm about case or promised him money or anything in this case; nor did they offer money or make any promise to Mrs. Cobb to testify in case. R. 4633–35.]

For Nancy Atkins.

R. F. DAVIS:

Testified that he lived in Wagoner, Okla., in 1888 or 1889; knew Nancy Atkins; noticed her being in family way; saw her later with baby and remembers Nancy bringing him with her to witness's grocery store. (R. 1202–07.)

J. E. NEWBERRY:

Lived in Wagoner, Okla., since March 27, 1890; boarded for first two years at Barnard Hotel; knew Nancy Atkins; she was around hotel working; in summer of 1890 he noticed her in family way; relates conversation had with Dr. Bryant about 4 or 5 months after witness first noticed Nancy in this condition. Dr. said witness ought to go and "see your kid." Witness asked, "What kid"? Dr. replied "Old Nancy's"; saw Nancy about a month after this; she showed no signs of pregnancy. Was delivering furniture at Mrs. Walker's, who asked him if he wanted to see Nancy's baby; didn't see the baby. (R. 2418–27.)

CHARLES BAILEY:

Lived at Wagoner from 1888 to 1907; knew Nancy Atkins when latter first came to Wagoner; she worked at the section house; afterwards lived with colored woman named Birney; saw her in pregnant condition either in 1889 or '90; child was born to Nancy in a tent near Davis & Jones yards; was told of it by colored woman; later Nancy was moved to Betsey Birney's (so witness was told); saw Nancy there quite

often; didn't see child until it was about one month old; saw it frequently thereafter for 4 or 5 years; missed it; afterwards was told it was dead; child was called Tommy Atkins; it was a boy; knew Minnie Atkins and two children of hers, Charlie and Harvey Harrison; first saw them in 1895 or '96; witness kept Charlie at his house until he was 22 years old; witness was appointed his guardian; he was 4 or 5 years old when he came to witness's home; had some correspondence with Minnie; saw her in 1895; Minnie never mentioned having a child named Thomas Atkins; the Tommy Atkins he knew was living at Betsey Birney's. (R. 2227–34.)

Cross-examination:

Saw the child in the yard or on the porch of Birney's house; Nancy or Betsey had it in their arms; doesn't know whether baby was Nancy's or Betsey's or Betsey's grandchild; so far as witness knew Nancy had but one child. (R. 2437–38.)

James E. Long:

Lived in Wagoner from 1896 to "last year"; knew Nancy Atkins; she had a mulatto-looking boy—six—seven years old; saw him around there for about 4 or 5 years; saw boy with Nancy and Maggie Martin, this in 1897 and '98; boy was called Tom; witness contributed to fund for his burial in 1901 or 1902. (R. 2245–47.)

Cross-examination:

No personal knowledge whether Nancy ever had a child. Nancy associated with negroes and Indians

(R. 2248); never knew of Nancy living with Betsey Birney during '97 and '98 (R. 2456); was convicted of embezzlement when sheriff; new trial ordered; dismissed; county commissioners recommended his removal; he resigned (R. 2256–57).

RICHARD BIRNEY:

Lived in Wagoner along about 1894; knew Nancy Atkins; she had a child—it was a little bit of a thing when witness first saw it (witness was a little fellow then)—it was brought to his mother's house; saw child a good deal until witness went away from home; pretty good-sized child then; boy called Tommy Atkins; Nancy had him in her arms when he was brought to Birney's house. (R. 2457–59.)

Cross-examination:

Was about 12 years old when child brought to his mother's; had seen Nancy before when he was a little tad about 3 or 4; was 12 in 1890 [Nancy didn't go to Wagoner until 1890] (R. 2460–61); was sentenced to Leavenworth for larceny (R. 2461). This baby was left in his mother's care while Nancy was in the penitentiary (R. 2463).

Stated in testimony in *Bartlett* v. *Nancy Atkins* (state court) that child was born in a tent.

Is asked about affidavit executed by him making similar statement; doesn't remember signing. (R. 2464.)

NOLAN WILLIAMS:

Became acquainted with Nancy Atkins along in the '90's; knows there was a child with her that she said

was hers—was a year or so old when he first saw it; Nancy said its name was Tommy; saw boy for about three years, was between Indian and mulatto. (R. 2465–2468.)

Cross-examination:

Didn't get information about child from Nancy, but from old man Birney (R. 2469); won't be certain he saw Nancy but the one time with the child (R. 2471). Only recollection that witness now has is that some time in the past he was coming out of Wagoner and saw a child with Betsey and Nancy, and Nancy said it was her boy, and old man Birney told witness it was Nancy's boy. (R. 2472.)

JOHN T. BEARD:

First saw Nancy Atkins in Wagoner in latter part of 1889 or '90; she appeared to be pregnant; this was before she was sent to the "pen"; saw her later, carrying the child in her arms and saw the child when it was walking; child 2 or 3 months old when he first saw it; Nancy said it was her child, called it Tommy. Saw boy in 1897–98 when he looked like he was 7 or 8 years old; he would often come with Nancy to store where witness employed; last saw child in 1898 or '99; remembers contribution taken up to bury child in 1901 or '02; child known as Tommy—Tommy Atkins (R. 2474–78); never knew Minnie.

On cross-examination is asked about testimony given in State court case where he testified that he had seen Minnie Atkins in 1890 at Wagoner. (R. 2484.)

M. I. SULLIVAN.

First became acquainted with Nancy Atkins in 1892 at Wagoner; she had a child two or three years old; said it was hers; Nancy was at witness's place of business at the time; saw the child probably every week; was acquainted with child from 1890–'95. (R. 2486–88.)

Cross-examination:

Nancy associated with colored people mostly (R. 2490).

A. GRANT WASSON:

First acquainted with Nancy Atkins in 1889 at Wagoner; remembers she had a child that she claimed was hers, named Tommy; was about 2 years old when witness first saw it in 1890; saw child around there afterwards until 1895 or '96; was 4 or 5 when last saw him; looked like mixed between Indian, nigger, and white. (R. 2493–95.)

ANDREW JACKSON:

Knew Nancy Atkins; first saw her in Wagoner in 1892; knew she had a child, boy; he was 3 or 4 years old then; was riding out of town and nearly ran over child; asked Nancy if it was her child and she said yes; told her she had better keep him out of the road; thinks he saw child around the store occasionally. (R. 2500–02.)

JOHN FORD:

Lived at Wagoner from 1887 for about 25 years; first acquainted with Nancy Atkins in 1888 or '89; was living in Wagoner when Nancy had child born to her;

saw the child two or three days after birth at Betsey Birney's; Nancy was in bed with it; was at Betsey's gambling nearly every night; would see child frequently; was yellow color, Indian look; last time witness saw child he appeared 8 or 9 years old; that was in 1899; gave 25¢ toward defraying funeral expenses for child; told him Tommy Atkins was dead; didn't see funeral procession; didn't know where they buried him; didn't know of Nancy having any other children. (R. 2505–08.)

J. L. DYER:

Knew Nancy Atkins first in winter of 1890; she was pregnant in '90 or '91, soon after he went to live in that vicinity; remembers seeing her on street with a child after he had missed her a few months or more off the streets; had child before she went to the "pen"; child about 3 months old when he saw it; child was called Tommy; saw it around there until it was 9 or 10 years old; heard that it died; in 1901 last time he saw it. (R. 2519–21.)

Cross-examination:

Was convicted of "being constructively present at a robbery." (R. 2521.) Got new trial and got off at that trial.

JASPER NEWTON SKRIMPSHER:

Knew Nancy Atkins, who was related to witness's wife; doesn't know of her having child only what she told him; she had boy running around there 6 or 7 years old, which she said was her's, named Tommy Atkins; witness ran butcher and merchandising store;

Nancy traded there, sometimes sent boy to shop for meat, etc.; boy 8 years old when witness last saw him; doesn't know what became of him; he looked like half-blood Indian. (R. 2523–25.)

Cross-examination:

Saw him only about a year (R. 2526); saw boy about '91 and '92; he was about 7 years old then. (R. 2527.)

FOIL M. BRADY:

First acquainted with Nancy Atkins along about 1890; she was employed at McNally restaurant; went there on one occasion to get his boy, he was playing there with boy about 2 or 3 years old; Nancy came out and witness asked if it was her boy and she said yes; name, Tommy Atkins; month later was in town and asked about boy and Nancy told him he had died; never saw child after that; he died before Indian payment. (R. 2527–29.)

KIRK TURNBO:

Knew Nancy Atkins in Wagoner in about 1891 or '92; came in to have horses shod and saw Nancy; she was calling for "this boy," asked, "Have you seen anything of my boy Tommy"; saw the boy once in a while after that; last time he saw him boy was about 10 or 11 years old; (about 1902) thinks he contributed to fund to bury Tommy. (R. 2529–31.)

Cross-examination:

Was deputy U. S. marshal under Judge Stuart when he first saw the boy, 1892. (R. 2535.)

WALTER POSEY:

First saw Nancy Atkins in 1891 or '92 at Wagoner; saw a child with her; she said it was hers; saw it a few times with her, mostly with old man Birney; it stayed around there with the Birney children; it was 4 or 5 years old; last saw it about 1900 or '01; appeared to be about 10 years old; was called Tommy Atkins. (R. 2537–39.)

GEORGE WILLIFORD:

First became acquainted with Nancy Atkins at McNally's Hotel about 22 years ago; saw her in condition of pregnancy about that time; it was before she went to the "pen." Saw child with her whom she called Tommy; it was about 2 or 3 years old when witness first saw it; saw it a time or two. (R. 2539–41.)

Cross-examination:

Mr. White asked him if he knew about Tommy, and then "they" prepared an affidavit and witness signed it (R. 2543); saw the boy with McNally's boy before he saw it with Nancy; saw Nancy frequently for 3 or 4 years before he saw her with boy (R. 2544); didn't have the boy with her then; it was about 1895 or '96 when he saw the boy. (R. 2545.)

THOMAS BREWER:

Acquainted with Nancy Atkins; never saw her pregnant; knew she had a child; saw him with Nancy several times; was a good, big kid; talked, went around everywhere; mixed blood, wasn't white and wasn't nigger; went by name of Tommy Atkins;

died about 1901; boy came to witness's house for milk. (R. 2545–48.)

Cross-examination:

Boy was about 6 or 7 when he died (R. 2550); Nancy was living in Wagoner then (R. 2551); didn't know boy until witness moved to Wagoner in 1899 or 1900. (R. 2553–54.)

FRANK ENGLES:

Went to Wagoner in December, 1890; knew Nancy Atkins about six months after that; she had a small kid with her; saw her carrying it in her arms and also leading it around; child about one year old; saw him for 5 or 6 years; last saw it in 1900; looked like an Indian child; never heard Nancy say whose child it was. (R. 2557–61.)

Cross-examination:

Child about 6 or 7 when witness last saw him. (R. 2562.)

W. A. MCELROY:

Lived near Wagoner 1889–1901; was about Wagoner a good deal; saw Nancy in Wagoner about 1890; she had a child behind Davis & Jones' store—a collection was taken up for her (witness doesn't know about child except that collection was taken); saw child with Nancy afterwards; witness in town every six months for several years and saw child around town nearly every time he was there; 7 or 8 years old when witness last saw it; name of child always understood to be Tommy Atkins. (R. 2567–69.)

Cross-examination:

First learned child's name in 1896, 7, or 8 (R. 2570); the child lived at Betsey Birney's; last saw child in 1899; couldn't say whether when collection was taken up child was dead; it was said Nancy had given birth to child and was in bad condition (R. 2573); child appeared to be Indian and white (R. 2574).

J. M. PRESTON:

First knew Nancy Atkins in 1894 or '95 at Wagoner; she had a child about 5–7 years old, light complexion, molasses hair; child called Tommy; Nancy told him it was her child; saw the child around there about a week; never saw him after that. (R. 2575–77.)

Cross-examination:

Asked about affidavit he made in 1914; looked it over a few days before; stated therein that child was 4 or 5 years old, now still says it was 4–5 years old. (R. 2580-81.)

D. W. BEST:

Became acquainted with Nancy Atkins during 1895; she had a child (supposed to be hers), swarthy little fellow, not white, was between 4 and 5 years old when witness first saw him; continued to see child until in 1898 or 1900; was about 9–11 years old when witness last saw him. (R. 2582–84.)

Cross-examination:

Was at blacksmith shop when he first saw child; blacksmith said, "There comes Nancy Atkins and Tom." (R. 2585.)

T. J. WAY:

Knew Tom Holden and Katie Holden; was at their place frequently; Charlie and Harvey Atkins and Tommy Atkins lived with them; Mrs. Holden was sister to Minnie and Nancy Atkins; Holdens said that Charlie and Harvey were Minnie's children; saw Nancy Atkins at Holdens at one time; had conversation with Nancy and the Holdens with reference to Tommy; they said he was Nancy's child. This was in 1899 or 1900; after Tommy had been at Holdens some time Nancy came and took him away, so Mrs. Holden told him. (R. 2591–95.)

Cross-examination:

Child appeared to be not more than a half-blood Indian. Age then 6–8 years (R. 2601); Harvey and Charlie were at Holden's continuously until he died, in 1900 (2605–06).

W. C. SMITH:

Kept drug store at Wagoner; Nancy kept coming around the store, had a little yellow headed kid about 3 or 4 years old with her; asked porter who Nancy was and was told "Nancy Atkins and her kid"; saw Nancy and child off and on for about 3 years, on the streets generally; saw child last in 1901, 02, or 03; child, sallow complexioned. (R. 2607–09.)

Cross-examination:

Last time saw child he was 3 or 4 or 5 years old; was walking by himself. (R. 2609.)

BOB DELOZIER:

Lived in Wagoner 20 years ago; knew Nancy Atkins in Wagoner for about ten years; got acquainted

with her about two years after he went to Wagoner; she had a child when she was living in a tent back of Betsey Birney's house; witness was sent there with some grub for Nancy; saw her in the tent; saw a child lying there in bed; Nancy was in a condition of pregnancy a few months before; saw child for about nine years after it was born; saw it with Nancy often; child died—buried out northeast of Wagoner where graveyard now is—helped dig grave; was there when child buried; Monday Barnett, negro preacher, conducted ceremony of burial; doesn't recall if Nancy at burial; first morning witness went to tent (when baby born) he helped move Nancy out of tent into Betsey Birney's house; Nancy was arrested about three months after birth of child; saw child from that time until it died; Betsey first took care of it and then it lived different places among colored people; boy called Tommy, Tommy Atkins. (R. 2611–15.)

Cross-examination:

Has served three penitentiary sentences for forgery. (R. 2617–18.) Went to "pen" some time after child's death, maybe a year later. (R. 2623.)

SAMUEL MCHENRY:

Has lived in Wagoner since 1898; Baptist missionary preacher; attended burial of boy "they" said was Nancy Atkins's; thinks Nancy was present; fixes date as 1901; witness officiated at the grave. (R. 2626–27.)

Cross-examination:

Never heard of Nancy having a boy by name of Tommy until time of funeral. (R. 2637.)

ELLIS CHILDERS:

Three-quarter Creek Indian; three times speaker of House of Warriors, Creek Council; treasurer Creek Nation one term; was district attorney during Creek courts; went to school at Carlisle with Minnie Atkins; known Minnie and Nancy Atkins since childhood—about 30–40 years; they belong to Euchee Town band, part of Creek Tribe; knew mother of Minnie and Nancy; knew of their father, Thomas Atkins, who was captain of the Light Horsemen several years; he was of Coweta Town, mother was a Euchee; according to Creek usages the children of the marriage followed the mother because she was Euchee and father was not. (R. 2637–39.)

Was at Carlisle January, 1880–June, 1884; spent life in Creek Nation except when at school; judges Nancy to be 41 or 42 years old, Minnie 57 (R. 2639); intermarriages between Atkins and Childers families; knew Nancy in Wagoner; at time of pasture payment in 1890 (Oct. 1st) one Sam Childers told witness Nancy had had baby and was in destitute condition; subscription was circulated and some of the women went to see Nancy and reported that they had secured Betsey Birney to care for her; shortly after, within ten days, went to see Betsey Birney and while there saw Nancy and the child (R. 2640–41); saw a child with Nancy about a year later; couldn't say if

same child, learned later it went by name of Tommy Atkins; last time saw child it was 1½ to 2 years old; saw him with Nancy and the others that lived there, around Davis & Jones's store (R. 2642–43); saw Nancy in 1890 several times; she was pregnant; never saw her pregnant more than the one time; birth of child was before Nancy sent to "pen." Describes method by which 1895 roll was made up (R. 2645–47) at extraordinary session of council in May, 1895. At that time knew Nancy had a child, but can't recall whether he knew the boy's name was Tommy Atkins. (R. 2647.) Knew then that Minnie had two boys, didn't know their names then; never knew of her having other children; understanding in Atkins family in 1895 was that Minnie had two children.

Sam Brown called witness out of the house and asked him to come into committee room to verify three families of Euchees that lived in witness's section; the Atkins family was one of the three; was the reputation in Atkins family that time that Nancy had one boy. (R. 2648–49.)

The 1895 roll was made from rolls made up by Town Kings; these were examined by the council committee and, if approved, it endorsed it and passed it on to the council (R. 2652, 2653); names paragraphed and numbered separately represented families (R. 2654); identifies names of Atkins family on 1895 roll (R. 2655) and is asked concerning notation "error" on 1890 roll.

ment, and he told Hammett that he didn't believe this child entitled to enrollment, but if anybody's child it was Nancy's. Didn't know how long Nancy's child lived, but understood it died very shortly after it was born. Did not at any time know any Creek child born to Minnie or Nancy Atkins named Thomas Atkins.

Witness admits testifying thus. (R. 2668–71.)

Witness admits that he gave Government representative names of persons to be interviewed who could testify of birth and death of Nancy's child and accompanied agent to secure statements. Was in pay of Creek Nation at time. (R. 2671–74.)

Thomas Atkins, son of Richard Atkins, lived about 8 miles from Wagoner; he died about time land office opened; must have been about 12 years old when he died. Richard Atkins's family were cousins of Minnie and Nancy (R. 2674). Witness's attention first called to Thomas Atkins's name on roll by Harjo, but he paid little attention to it and didn't give a satisfactory answer (R. 2675). Nancy Atkins was taken to witness's house by Jim White; she stayed there three weeks.

Q. Then you told me, didn't you, that you believed that if you could get Nancy away from that crowd that she would tell the truth about this boy; is that a fact?

A. I may have; I don't recollect.

* * * * *

Q. Didn't you say if you could get her away from that crowd you could get her to tell the truth?

A. You said it and I sanctioned it. You asked me if I didn't think so, and I said yes." (R. 2676.)

(See R. 2692 relative to name Thomas appearing with names of Richard Atkins's family; also R. 2694.)

NANCY ATKINS:

Lived in Creek Nation all her life (45 years); doesn't remember the year she went to Wagoner; Barnard Hotel first place she worked there; was pregnant when she went to Wagoner; child born in September at Elnora Williams's house; was a boy, died spring of 1900; would have child with her often; had to have somebody care for him while she worked, would send him to Betsey Birney's; never gave birth to another child; was at burial of child; MacHenry and E. J. White were also present; child was 3 or 4 months old when she went to "pen"; served 6½ months in "pen"; upon return to Wagoner went to Betsey Birney's and found child there. (R. 2697–2700.)

Relates how prior to trial of case against H. U. Barlett and Gypsy Oil Co. brought by herself she was visited by Bartlett's son, Betty Mann, and others and taken to Sapulpa, and after being there a few days went to office of Lytle; Bartlett's son also there; they wanted her to say child was a girl; told her by claiming it to be a boy she was fixing to go to the "pen"; Betty Mann had told her Bartlett child would give her $2,000 if she would deny the (R. 2700–03); never got the $2,000. Statement she

made that day in Lytle's office was false. In trial at Sapulpa she took back what she said in that statement and testified that child was a boy and lived several years; that was the truth (R. 2704).

Since trial of that case, Sadie James endeavored to get witness to go with her to see Minnie Atkins; Sadie offered Joe Byrd $50 to persuade witness to go. Sadie went so far as to say to Joe Byrd that she wanted to get witness to Kansas City and there wouldn't be any more Nancy (this last not in presence of Nancy; she was told of it R. 2704–05); Sadie arranged to take witness with her, but witness had J. B. White called on phone and when informed of attempt to take witness away he came out and took her to Ellis Childers' (R. 2706). This was latter part of September. She stayed at Childers' until December. Her guardian, Harjo, also tried to get her away; she was at Coffeyville with Harjo and his family on their way to Portland, Oregon; made a statement to some lawyers there; Harjo told witness Bartlett offered him $500 if he could get her to deny child. This was before testimony at Sapulpa. Had interview with Bartlett and made statement a few days later; after making statement in Lytle's office, *they* wanted witnesses to prove child was girl; witness told what witnesses to secure; went with Bartlett, Betty Mann, and others to see witnesses; relates how witnesses were "coached" to say child was girl (R. 2706–09); witness was doing this to get out of case entirely (R. 2709).

Now states child was boy and she named it Tommy (R. 2709); died in spring of 1900; he was 8 or 9; had Minnie's two boys for two or three months (R. 2710); Tommy was puny child; had light hair when young; grew darker as he grew older (R. 2712).

Cross-examination:

Sadie was representing Page; witness was induced to give false deposition through fear of going to "pen" (R. 2712); admits she swore at Sapulpa that child was girl and born dead (R. 2713); Betty Mann told her if she so swore she would get $2,000. Attention called to affidavit made in district court, Sapulpa, opposition to new trial when she stated that Harjo came to her at Coffeyville and informed her that Bartlett desired statement that Minnie Atkins was mother of Tommy and that Nancy wasn't; Harjo told her Bartlett was willing to give her $500 to make such a statement (R. 2714); Bartlett never offered her any money—offer made by Harjo. When she gave deposition in MacDougal & Lytle's office her two lawyers were present and cross-examined her at length (R. 2715). Ellis Childers told her that she would get into trouble if she didn't change testimony and swear child was boy (R. 2719–20); admits she stuck to story about child being girl and born dead from July, 1913, to Feb. 9, 1914 (R. 2720).

Witness filed an allotment for herself, but not for child (R. 2725); Harjo was the first one to suggest that witness was entitled to the land in controversy; witness, at Harjo's instance, signed lease to Hammett

for $50 (R. 2726). Bartlett was the next to talk to her about land; wanted her to swear her child was girl and that Tommy Atkins belonged to Minnie. Witness told him she was willing—wanted to get out of case (R. 2727–28). Harjo was to get the $500 for this (R. 2728). Made same statement in Lytle's office; her lawyer was present and cross-examined her; she stuck to story that child was girl, born dead (R. 2730); witness's uncle, Wm. Robinson, looked after enrollment of witness; he agreed to get them all on the roll; didn't file for boy because wasn't sure he was entitled to it, being dead when selections made; left that to Robinson (R. 2736–37); didn't ask commissioners about that (R. 2743).

Bob Delozier did not bring her her meals when she was confined. (R. 2740. Note: Delozier testifies that he did.) Child born at Elnora Williams's and not in a tent (R. 2740); was in bed there three weeks, and it was a month before she was "stirring around" (R. 2741).

BLANCHE YARBORO:

Lives at Nowata, Okla.; knows Nancy Atkins; remembers Sadie James coming to her house a year or two ago; Sadie said she was there to see guardian of Nancy; said there was money to be paid to Nancy; Nancy came in while Sadie was there; Sadie phoned to Page at Tulsa; she wanted Page to meet her that night; said "the party" will be ready to go. Nancy did not leave town, for witness put her away so that no one could take her away; telephoned to Mr. White; he came that night and took Nancy away in the morning. (R. 2744–45.)

Cross-examination:

Identifies Govt. Ex. A–107 (R. 4829) as bill rendered by telephone company for call to Page by Sadie; shows call by Whitaker to Tulsa on Sept. 25, 1914; Sadie put call in under name of Whitaker. (R. 2745–46.)

J. B. WHITE:

Lived at Coweta, Okla., since 1901; deputy clerk of county court; lived Wagoner beginning spring of 1895; knew Nancy Atkins at Wagoner; saw her frequently; she stayed a good deal at Betsey Birney's; saw boy in 1896 with Nancy and playing on the streets; Nancy said it was her boy; was about 5 or 6 years old; looked to have Indian in him; saw child up to 1900; first heard of this Tommy Atkins matter in 1913; oil development in locality was then about 5 to 7 miles from land in controversy; had many inquiries made of him regarding Tommy Atkins; then went looking into it himself. Located Nancy; saw Harjo, her guardian, and asked for lease; secured lease from Harjo and had it approved by county court; talked over lease with Nancy in presence of Harjo; after taking lease, filed suit against Bartlett and Gypsy Oil Co.; latter in possession under lease from Bartlett. Suit was in name of Nancy Atkins, by her guardian Harjo, *v.* Bartlett and others, filed July 23, 1913. After approval of lease, did not see Nancy until she gave deposition in that case on February 9, 1914, in McDougal & Lytle's office; after that he sent Ellis Childers after Nancy; had no conversation with her

until after trial was over. Was phoned to by Mrs. Yarboro to come to Nowata; found Nancy there; she asked him to take her away; witness sent her to Ellis Childers; Nancy was later brought to Mr. Allen's office (representative of Government); witness went to Wagoner to look up witnesses after he took lease; Ellis Childers assisted him. (R. 2747–59.)

Cross-examination:

Knew the Birney children; probably has seen Joe Birney with Nancy; Nancy never had a white child with her; boy Tommy claimed was light colored; could tell by looking he had negro blood. (R. 2759–60); remembers Thomas Atkins in Dick Atkins's family; never saw Nancy with this Thomas—he was mulatto; this child of Nancy's was called Thomas (R. 2761).

Witness and his associates furnished the money upon which this case has been carried on (R. 2766). Sent Ellis Childers to see Nancy after she gave deposition at Lytle's office because he was convinced she had told falsehood about not having boy child (R. 2766); kept Nancy concealed and was going to spring her as a surprise at trial at Sapulpa (R. 2768); didn't know what she would testify to.

Remembers getting 25 or 26 affidavits to be attached to answer to motion for new trial in *Atkins-Bartlett* case (R. 2768); never had testified before that he knew anything about Nancy and her child (R. 2769).

Testimony of Nancy Atkins given at trial Atkins v. Bartlett in state court at Sapulpa is introduced as follows:

Gave birth to a child.

Q. "What kind of a child was it?"

A. "Supposed to be a boy, I guess."

Lived to be 10 years old; admits testifying in deposition Lytle's office previously that she had a girl child which was born dead and that this was only child born to her (R. 2775); says what she testified to then was false; now places birthplace at Birney's and not at Williams's house; testified falsely because told there was big money in it for her; thought she ought to get some of it (R. 2776); told Bartlett that child was girl because Harjo got her to do so (R. 2777); was promised pay for affidavit given at Coffeyville; had been told she would go to the penitentiary if she didn't change her testimony (R. 2780). Betty Mann also told her there was big money in it for her if she would deny the child (R. 2782).

Deposition of Nancy Atkins given at Lytle's office February 9, 1914.

Had a female child born to her; born dead; no other child born to her; living at Wagoner when child born; child born at Mrs. Williams' (R. 2785); doesn't know anything about Thomas Atkins (R. 2786); made up her mind last July to testify child was girl; told Harjo, Hammett, and Bill Robinson; they wanted her to "swear child was a boy, this Thomas Atkins that they are bringing up, and I knew that was none of mine";

that was first time she had ever heard of Thomas Atkins (R. 2787); only Thomas Atkins she knows was Billy Atkins' child, who lived at Coweta; doesn't know who enrolled Thomas Atkins. Mrs. Robinson, Robinson's wife, enrolled Nancy (R. 2788). Knew Harjo as her guardian was executing lease to Thomas Atkins' allotment; witness told him that she did not have anything to do with it because the child wasn't hers. (R. 2790.)

Denies on cross-examination that she told White, who was negotiating for lease, that she was mother of Thomas Atkins and that he lived to be 10 or 12 years old. (R. 2792.)

R. C. ALLEN:

Employed Ellis Childers; sent him after Nancy Atkins; she didn't come at that time; Mr. Maxey telephoned witness he would produce Nancy if witness wanted to talk to her; later Mr. Maxey, Judge Rosser, and Nancy Atkins came to witness' office; witness interrogated her and had questions and her answers taken down; after interrogation finished witness asked that Nancy be permitted to talk with Ellis Childers alone in another room; after Childers came out, witness stated that he didn't care to question her further. (R. 2794.)

Cross-examination:

Knew at time he employed Childers that he had been employed by White. (R. 2795.)

J. K. MCCLAREN:

Lived in Wagoner from 1885 to 1891; was about 17–19 years old in '91; last two or three years before

leaving there worked in Davis & Jones' store in winter time and on ranch in summer time; worked winters '89–'90 and '90–'91 at store; knew Nancy Atkins from 1887 to 1891; she lived in a tent in the back part of company's lumberyard at one time; stayed with negroes named Birney and negroes named Williams—several places; she worked at Bernard Hotel some of the time; she had a child; most distinct recollection of it was about 1890 or '91; there was a little child about 1½ years old, couldn't talk; can't say whether boy or girl; Nancy left it when she went out to work, but witness saw her at store many times with child; would see it also with Birney children and on the street; looked like a mixed-blood. (R. 4406–09.)

Cross-examination:

Was in Wagoner when child was born, but doesn't remember when he first saw it; doesn't recall seeing Nancy in a family way (R. 4412); doesn't know of Nancy's going to the "pen" in 1890 (R. 4413); doesn't know child was Nancy's except that she claimed it. (R. 4414).

J. H. ANDERSON:

Made Wagoner his home from 1883; went to Coweta in '92; knew Nancy Atkins; he hadn't been in Wagoner long before he saw her there; doesn't remember seeing her in a pregnant condition; saw her leading a child once which she said was hers; that was about 1890, child then 3 or 4 months old; saw child after that; remembers Nancy going to the "pen." Betsey Birney took the child while Nancy

was gone; saw child with Nancy when she returned. Returned to Wagoner in 1903; saw Nancy, but not the child; Nancy told him it was dead; never knew name of child.

Knows Dick Atkins's family; Thomas Atkins in Dick's family is not the child he knew as Nancy's; Dick's Thomas was five or six years older than Nancy's. (R. 4414–17.)

Cross-examination:

Child 2 or 3 years old when he last saw it. (R. 4417.)

M. J. PHILLIPI:

Was in newspaper business in Wagoner beginning 1892; knew woman there named Nancy Atkins; she had a child; saw child occasionally; saw it there for two or three years; looked like it had negro and Indian blood—some white; last time saw child about 1894 or '95; it was about 4 years old. (R. 4419–20.)

Cross-examination:

Had been in Wagoner about a year when he first noticed child, then about three years old (R. 4420); doesn't know whose child it was of his own knowledge; saw Nancy with Dick Birney's children; child was called Tommy (R. 4421). Left Wagoner in 1906 (R. 4422).

LIZZIE M. MILLER:

Lived in Wagoner for fifteen years from December, 1897; knew Nancy Atkins there; got acquainted with her in 1898; she was staying at Birney's; she had a child, called him Tommy; witness rented to Birney house in which latter lived; was at Birney's fre-

quently; Nancy and the child there; remembers when child was sick and of its death; was there the day child was buried; was 7 or 8 years old when she last saw him in 1899. (R. 4422–24.)

J. B. WHITE:

Had a conversation with Henry Anderson in Wagoner when witness was investigating this case; Anderson told him that he knew Nancy had a child and it was a boy and was named Tommy; that child lived to be quite a big boy; when affidavit to this effect was prepared Anderson said he wanted one hundred dollars for himself and one hundred dollars for one Phillips, whom he had procured for witness; told witness if they gave affidavits they had to have $100 down and $300 after case decided; witness refused to pay anything except for the day's work; never told Anderson he wanted him to testify that the boy lived and that Anderson said "no." (R. 4555–56.)

AUGUSTUS A. DAVIS:

Has resided in Wagoner, Oklahoma, since 1893; until seven years ago was in secondhand business; knew a boy at Charlie Bailey's home out on the farm near Wagoner, the boy was an Indian; first saw boy there in 1895 or '96; knew Nancy Atkins at Wagoner; saw a boy with her once when a man named Snow and she came into his store, boy was with her; Nancy said "this is my boy, I want to get him a pair of shoes"; had seen boy two or three times before; boy had been in witness's store with couple of colored

boys. On occasion when Nancy had him at store Nancy called boy "Tommy" and then told witness his name was Tommy Atkins; boy was sandy complexioned—witness called him "a red-headed nigger"; thinks boy was of white and Cherokee blood; couldn't see any negro about him; the boy at Charlie Bailey's and the boy with Nancy were different boys. (R. 4593–97.)

Cross-examination:

Denies he said the boy looked like a red-headed nigger; he was dark and dirty; never saw him but once with Nancy; never had seen Nancy until the time Snow brought her into store; had heard of her. (R. 4597–98.)

For Henry Carter.

T. W. BELL:

Lawyer, practicing in Leavenworth for past thirty years; one of the attorneys representing defendant Henry Carter. Knows George Crilly of Leavenworth; had a conversation with him in presence of Coody Johnson and R. E. Martin, in witness's office in Leavenworth latter part of 1915; Crilly stated that his judgment was that defendant Carter was the boy known as Commodore; that he (Crilly) had told Clarence Turner he was and that he had not made up his mind he was not the boy; that he had talked to Carter about things that happened when he was a boy and Carter seemed to have a recollection of them and convinced him more than ever that Carter was the boy he had known as Commodore.

Knows Dennis Jones; Dennis, in conversation with witness in state district court room in Leavenworth in spring of 1915, told him that he (Jones) wouldn't say that Carter was not the boy Tommy Atkins that he saw at Granny Letcher's.

Dennis Jones also stated to witness, in Federal court room in Leavenworth in spring of 1916 that if he (Jones) had been permitted to have gone ahead he would have found the real Thomas Atkins and "for you folks—speaking to witness—to go ahead as you are; you are on the right track." In that conversation Jones also said that witness had taken up Carter where he dropped off and were wise in doing so.

In 1916, shortly after depositions in this case had been taken by Examiner Penick, Dennis stated that he was unable to say that Carter was not the Thomas Atkins that was at Granny Letcher's.. (R. 4346–47.)

HENRY THOMAS CARTER:

Is the defendant Henry Thomas Carter in this case. First place he remembers living was Mrs. Letcher's, on Seneca Street, Leavenworth; she was a negro; did not know her as Granny Letcher; Sam Nash, Walter Banks, Jim Mayo, and Hattie Nash were other members of the family there; Jim was largest of the boys, Walter next, and Sam next; Sam was larger than witness; remembers Crilly's barn across the street; played around on the street and over at Crilly's barn and around the house there; Crilly

had a one-armed man, Tom Dailey, around the barn. Witness was called Tommy and Commodore when at Mrs. Letcher's; when a little fellow, Henry Carter took him to his farm and he was raised there. For a short time after leaving Letcher's, came back every couple of weeks to Leavenworth with Carter; then started to school; didn't go back to Leavenworth again after starting school until he was 10 or 12 or 14 years old; went then to Mrs. Yoakum's; saw Mrs. Letcher once on those trips—at Mrs. Yoakum's; Miss Anna Davis, Miss Mamie Byron, Miss Denny, Mr. Hall, Mr. Kelsey, were his teachers while at school; didn't tell these teachers his age—he didn't know it. (R. 4348.)

First saw Adas Wright short time after he was taken to Carter's; she and her husband and a child came to visit the Carters; had seen her off and on since.

Lived in the Carter family until Carter's death. Tommy Carter, Susie Carter, and Viola Carter lived in the Carter family at this time. First saw Viola at Carter home, but doesn't remember whether she was there when he went there—she was there shortly afterwards. Asked old man Carter several times who his parents were and he told witness his mother was an Indian woman; "he says you are my boy now"; never told him more than that, nor the name of his mother. After Carter's death witness went to Leavenworth, where he stayed two weeks. Tried to enlist in Army, but was refused because looked

too young—not 21; went back to Carter farm; stayed there short time and went to Indian Territory to see if he could find some trace of his mother; stayed something more than a year; married there under the name of Kessinger; used that name because his friends around Carter place told him they wouldn't go by that name, it was a nigger name—that was only reason for changing. Gave his age as 24 when he applied for marriage license, didn't really know his age.

Witness then details his movements for number of years, during which he oscillated between Indian Territory and Leavenworth; trips to Territory were usually for purpose of finding his mother or something about her.

First heard of Tommy Atkins matter three years ago. A government man from Washington, D. C., first interviewed him; next to see him was Long; gave him some information he had given Government man; Crilly was with Long; about two weeks later at Long's invitation went to see him at National Hotel, Leavenworth; Dennis Jones, Rube Smith, Sam Nash, and Mr. Josey were there; Dennis, Sam, and Rube identified him as the boy they were looking for. Sam Nash referred to birthmark and witness showed it; witness had a little boot he wore when he left Letcher's and Sam Nash told him that he had bought it for witness; Dennis Jones told Long, "You have the right boy."

Signed the lease at that time to Gem Oil Co. Dennis Jones took the acknowledgment. Govt. Ex. A. 66. (R. 4752.)

At Carter place witness was called Tommy H. and Commodore; never was recognized by the Carter family as related to them; no relation that he knew of to Viola; doesn't know where Viola came from; never heard old man Carter say where she came from; witness and Viola went to school together. (R. 4348–60.)

Cross-examination:

Doesn't remember incident of smoking Van Tyle's pipe at latter's barn; doesn't remember pointing finger at fruit on trees in Granny's yard or getting after boys for pointing at it. Crilly asked him about that recently. (R. 4360.)

When Crilly and Long first interviewed him witness was putting in a furnace in a cellar; Crilly called him out and introduced him to Long, who said "anybody could see he is part Indian" and that witness was the boy he wanted. It was some time after this that he signed lease to the Gem Oil Co.; he saw Long and Crilly several times before he signed it. (R. 4361.)

Has known Crilly nearly all his life; doesn't remember of Crilly seeing him from time he was a little boy until last two or three years. Witness had signed the papers when Crilly talked to him about fruit-tree episode. Another time when Long talked with witness, Rube Smoth was with Long,

and when Long again said witness was right boy Rube agreed with him.

Long went out and made investigation in vicinity of Carter place before he took conveyances from witness. (R. 4362–63.)

Talked with Dennis Jones at his office quite a while before signing lease; Long took witness there—Rube Smith was present also; Dennis said, "Mr. Long, we have got the right boy." (R. 4364.)

Took a lease and then a deed from him. (R 4365.)

Whenever Long came to Leavenworth he would come to see witness and tell him they were working awfully hard to get everything in shape for him. (R. 4366.)

Never wrote Bagley letter dated Oct. 17, 1914, stating what his address was and that his mother was sick in the hospital. Saw Minnie Folk at a distance in fall of 1914. Never went to hotel to see her while she was there. (R. 4366.)

At the time Minnie was there witness still believed they were trying to establish his claim to this land. (R. 4367.)

Recalled:

When married the first time, in 1904, gave his age as 24; when married second time, in 1908, gave age as 28; gave age as 24 because wife was 22 and he "wanted to be a man"; gave age second time as 28 because he had given as 24 when first married; never really knew his age. (R. 4457–58.)

C. W. TURNER:

In hardware business at Muskogee; met George Crilly "here" a couple of years ago; had a conversation with Crilly at the time of the receivership hearing in this case; Crilly stated that it seemed like they didn't want him to tell all he knew; that he wanted to tell up to a certain point and that if he were in Leavenworth he could place his hands on the real Thomas Atkins, who was there, going under the name of Henry Carter. (R. 4367–68.)

Cross-examination:

After Crilly talked to him and had gone back home witness wired him and telephoned him with a view to having him secure a lease for him from Henry. (R. 4370.)

For Government in rebuttal.

T. W. BELL:

In a conversation at his office with Mrs. Mattie Cobb, who testified on behalf of Page at Leavenworth in February, 1916, before Examiner Penick, she stated to witness in substance that the child she saw and dressed at Granny Letcher's had a scar on his back and that Mr. Page had told her that if she wouldn't tell that he would make her comfortable for life. Further stated that she would be willing to testify for witness as to that scar if he would make a substantial financial arrangement with her. At the same time and place she said to witness that she had told Lee Bond in his office about the scar; that he threw up his hands and said, "My God, I thought you

were my friend." She also told witness that Mr. Page had gone over her testimony with her and told her that he wanted her to testify to the birth of the child at Granny Letcher's and nothing else and that he would make her comfortable for life. At that same time she further stated that Long had told her that if she would testify right he would pay her for it.

Two or three days thereafter, witness had a conversation with Mrs. Cobb at the Federal Hotel at Kansas City, wherein Mrs. Cobb stated in substance the same things she said at Leavenworth. This was 30 to 60 days before she testified at Leavenworth and while depositions were being taken at Kansas City. She further stated then that she would be willing to testify for witness but before doing so wanted to see the big man with the money, referring to Mr. Blakeney. Witness told her that he was not paying anything for evidence; witness's stenographer, Mr. Morton, was present at the conversation at Leavenworth, as was Mrs. Cobb's daughter. Same persons present at Kansas City, except that witness is not sure that Morton was there all the time; Morton had brought Mrs. Cobb and her daughter to Kansas City at witness's request, as he expected to take their depositions there.

Mrs. Letcher was black. (R. 4433–35.)

Cross-Examination:

Witness was present at time Mrs. Cobb was asked about these incidents; was representing Henry Carter. Witness had sent for her to come to his office when

she told him these things. Told Bond that Mrs. Cobb had told him a story which he believed but didn't tell Bond about her saying child had a scar. (R. 4435–36.)

Witness, after Leavenworth conversation, had Mrs. Cobb brought over to Kansas City to testify for him, but when she came there she demanded $500 (R. 4437); he therefore didn't put her on stand as she told him she wouldn't testify (R. 4439); at Kansas City conversation Mrs. Tittle, Mrs. Cobb's daughter, was in an adjoining room in the hotel talking with Mr. Martin (R. 4440).

Redirect:

Witness knew Mrs. Cobb previously; he had represented her brother's family in cases. (R. 4441.)

R. E. MARTIN:

Witness and T. W. Bell are interested in lease on property given by Henry Carter; Mr. Bell, Mr. Blackeney, and Mr. Johnson represented the Henry Carter interests at taking of depositions before Examiner Penick at Kansas City and Leavenworth; was present in office of Mr. Bell in Leavenworth a short time before Mrs. Cobb testified at Leavenworth, at which time Mrs. Cobb had a conversation with witness, Mr. Bell and others; Mrs. Cobb stated in substance that Page had told her if she would testify to the birth of Thomas Atkins at the home of Granny Letcher, and nothing more, he would make her comfortable for life; doesn't remember her making statement that Long had told her if she would testify she would be well paid for it; nor

does he remember her making statement that Page had said to her that he didn't want her to remember anything about a scar on this boy's back and if she would remember right he would take care of her for the balance of her life; witness didn't hear all of the conversation at that time; he was in and out of the hall but was in there part of the time Mrs. Cobb was doing this talking.

Was at Federal Hotel in Kansas City when Mrs. Cobb was in a room opposite, but didn't hear her statement there; was present there when Mrs. Cobb said she wanted to see the big white man that was interested in the case. She did say she was willing to testify for them but before doing so they would have to make a substantial financial arrangement with her (R. 4442–44).

Cross-examination:

George Crilly told witness about the scar (R. 4446).

BENJAMIN B. BLAKENEY:

Attorney at law, one of the attorneys representing the Henry Carter interest; had a conversation with Mrs. Cobb at Federal Hotel, Kansas City, in February, 1916, just before she testified at Leavenworth, wherein she stated that she knew about this boy (Thomas Atkins); that she dressed him when he was a little baby; that he had a birthmark on his back, and he was afterwards taken to the country by Henry Carter; that Carter would return with him frequently and permit him to visit around there. (R. 4446–48.)

Cross-examination:

Thinks Martin was in the room during conversation; Bell was not there; Bell met him as he went up to see Mrs. Cobb and her daughter and told him they wanted to see him (witness); Mrs. Cobb didn't say anything about Page or Long "buying" her. (R. 4449.)

Redirect:

Witness had avoided seeing Mrs. Cobb for awhile; he is the so-called big white man referred to. (R. 4450.)

Recross-examination:

Every time Mrs. Cobb would meet Johnson or Bell, she would tell them she didn't want to talk to them, she wanted to talk to the big white man that had the money, and "as I didn't have it I avoided her." (R. 4450.)

FRANK KERSTEN:

City detective, Leavenworth; searched police records to ascertain whether in the '90's a person by name of Thomas Atkins was arrested or tried; found no record; looked from 1890–1901; finds record of Tommy York (R. 4455–57).

ELIZABETH DILLMAN:

Knows Minnie Atkins; knew her well at Fort Wayne and Fort Lawton; knew Minnie by sight only when at Fort Leavenworth in 1885; Minnie was employed by Grodevant; Minnie going down town from Grodevant's would pass by where witness lived; recalls seeing Minnie at Decoration Day service at

Post in 1885; she did not show any evidence of being in a family way; would see Minnie occasionally around the Post; never saw her when she appeared in a family way; did not know of her working for Stafford; she would not pass witness's residence in going from Stafford's to town (R. 4462–64).

DR. FINIS W. EWING:

Physician; states his education and experience; details three stages of labor in childbirth.

At passage of the child there is some laceration in the cervix; sometimes lacerations are caused by abortion or early miscarriage; when these lacerations heal, a scar tissue is left; it would not be possible in making an examination of the cervix during labor to determine from a simple manual examination whether scar tissue was from a former pregnancy or from some other cause prior to present labor; after dilatation has begun it would be impossible to make such a diagnosis; purpose of digital examination at time of labor is to determine whether presentation is normal and if bony parts of mother are sufficient in size to permit transmission of the foetus. In making that examination witness never did so to ascertain whether there was evidences of previous laceration; the fact of previous birth is ascertained by questioning patient.

If called to attend a case of childbirth where woman in intense pain, a normal woman, and a normal presentation, the pains having been in progress for about an hour, and no dilatation of the cervix was found,

his judgment would be that woman was a prima para (a woman giving birth to first child); to determine accurately whether lacerations are result of a previous birth, an examination by eye with a speculum is necessary, and disease could produce scar tissue which would readily deceive any examiner—might deceive the eye.

Assuming that woman is 5 ft. 6 in. tall, weighs 135–150 lbs., is not well groomed; witness' opinion is she could not successfully conceal pregnancy from a casual observer at six months; it would not be possible to conceal it during 7th, 8th, and 9th months.

During the first three or four months a baby nurses from ten to twelve times a day; where a mother was away from the baby except for one nursing during the day, it would be necessary for her to expel the milk from her breast at each period at which the baby would normally nurse; it would require about 15 minutes to empty the breast by manual manipulation without use of breast pump.

Theoretically the shortest interval that can occur between birth of one child and that of another by same woman is about ten months.

The general rule of lactation is the absence of ovalation, and absence of ovalation prevents conception. In ordinary cases (there are exceptions) during the time a woman is nursing a baby she does not become pregnant again. (R. 4469–77.)

CHARLES R. WARREN:

Born in Leavenworth in 1890, lived there all his life; born at 202 Seneca Street, moved to 201 Shaw-

nee, lives now at 305 Seneca; when 6 or 7 years old played with Alva Adams, Ray Adams, Conrad boys, Endres boys—Earnest is one—some colored boys named Clay; most of the boys lived around there—Seneca to Cherokee, 2d and Olive, Second and Market; remembers stealing rides on wagon driven by one Higgins; knew Tommy York; played around that community until 1903; played around Crilly's barn on Seneca between 2d and 3d Streets; played around Van Tyle's barn; never played with a boy that was or looked like an Indian; did not know any boy named Tommy Atkins, Indian Tommy, Commodore, Tommodore, or nicknamed Trailer; played war; run, sheep, run.

Remembers a stone house on opposite side of street from Crilly's barn; it was a couple of lots from Van Tyle's barn, closer to 3d than to 2nd; remembers Sam Nash lived in that neighborhood. (R. 4515–20.)

FRED S. COOK:

While in employ of government was detailed to investigate the Atkins case. Had a conversation in March, 1915, with Dr. Carpenter in San Diego, at which Mr. Allen (of counsel for Government) was present, wherein the Dr. stated he had attended Minnie Peterkin (Atkins) at the birth of Robert Lee Peterkin at the Wood home; that so far as he (Dr.) could remember, this was her first child, but his records in Leavenworth would show; no suggestion or intimation given Dr. by either Allen or witness

that they wanted the doctor to testify that it was a first child or that such was their belief.

Remembers a conversation he and Allen had with Mary Smith at her home in Leavenworth during the winter of 1914–15, wherein she stated in substance that the woman she saw with a child at the home of Granny Letcher during the 80's was not the woman she afterwards saw and knew as Minnie Atkins or Minnie Folk. She also said that Henry Carter, defendant in this case, is the boy she saw there at Granny Letcher's.

Recalls conversation with Sam Nash on streets of Leavenworth same day they interviewed Mary Smith, in which Sam stated that Granny Letcher rented the house at 217 Seneca Street from Mr. Dassler—first rented it from Dassler. (R. 4522–25.)

Prior to the time Ellis Childers went to Nowata witness heard a conversation Mr. Allen had with him with reference to going to see Nancy Atkins, at which Childers said that if Mr. Allen or witness would go with him, Nancy Atkins would tell them she never had a child named Thomas Atkins.

Witness's memory is refreshed by reference to a report made by him of his work on this case, and he states that Mary Smith at the time he and Mr. Allen interviewed her said in substance that she was advised *not* to state on the witness stand at Leavenworth in 1914 in the Atkins case that the Tommy Atkins she was testifying about was Henry Carter. (R. 4535–36.)

Cross-examination:

Long, for the Page interests, complained to witness about activity of Pinkerton interest and Sadie James in the case; Mr. Long then told witness and Mr. Linnen, Chief Inspector of the Indian Service, that he would turn over everything of evidence he had and after an examination if they were satisfied he was wrong he (Long) would quit (R. 4526-27).

Redirect:

Witness was not then assigned to case when Long made proposition; witness told Mr. Allen what Long had said and Allen assigned him to case immediately. Long didn't turn over the information to him because witness wouldn't "collaborate" with him (Long).

Witness went to Leavenworth to investigate and on several occasions was followed around there by men. (R. 4527.)

CHARLES HARRISON:

Son of Minnie Atkins and brother of Harvey Harrison. Born at Fort Logan, Colorado; doesn't remember when he came to Indian Territory; mother gave him and his brother to Kate Holden, near where town of Haskell now is; they stayed there one summer and one winter, then were taken to Wagoner to Nancy Atkins, where they stayed about four weeks; no other boy at Kate Holden's while they were there—no boy named Thomas Atkins.

Knows Tom Way; when witness was a kid used to come over to Holden's and would play with witness; witness opened gates for him and Way gave him 25 cents quite a number of times for doing that.

When they were with Nancy Atkins, she was not caring for any other boy; witness knew no boy around Wagoner named Thomas Atkins;

Never knew anything of a brother named Thomas; mother never wrote to him prior to four years ago (R. 4528–30).

Cross-examination:

Was about 8 years old when mother took him to Kate Holden's (R. 4530.) Never heard of Nancy having a boy named Tommy or any boy (R. 4531).

JOHN HUTCHINGS WHITE:

Physician and surgeon. Details the three stages of labor in childbirth and explains how condition of female organs differ in a multipara and primapara. Birth of child results usually in lacerations of the cervix which when they heal form scar tissue.

The first matter for which physician makes an examination in case of childbirth is to determine position of the child and size of the pelvis; when cervix is dilated it is impossible to determine by digital examination the presence of lacerations; dilation occurs in first stage of pregnancy; dilation occurs more rapidly in multipara than in primapara; if large strong woman had been in labor for an hour and digital examination disclosed no dilation of the cervix, it would indicate a primapara; if at that stage of labor, indications of notches in the cervix were found, would not say on that one fact alone that there had been a previous pregnancy, although that is a condition that would arise from a previous birth.

In witness's experience, generally one year is shortest time between birth of one child and a succeeding child to same woman.

In a normal healthy woman it would take 15 or 20 minutes manipulation to remove milk from the breast, without breast pump. It would require three to five milkings of the breast to relieve when child nursed only once a day, during period when child three weeks on up to 4th, 5th, or 6th month. (R. 4538–44).

FRANK L. MONTGOMERY:

On the occasion when Minnie Atkins made her statement or confession to witness at the quarters of Capt. McNab at Fort Lawton, Seattle, Washington, witness did not make the direct assertion to Minnie that she was not the mother of Thomas Atkins, nor anything like it.

On the day following the signing of the confession he went to Minnie's house at request of Hanford; that was when Minnie retracted.

At the hotel that same day when Hanford came in witness introduced Hanford to Buell and Robinson, stating that Buell was representing the Quinton Garrett side of the case; that Robinson belonged to Secret Service, and that Robinson was working with Buell, and that they had no authority from the Government, but that witness was the sole representative of the Government in that meeting—this was in the afternoon.

In the evening went to Minnie's house, departing from hotel as soon as meeting was over; trip to

Minnie's was at suggestion of Buell, perhaps; had communicated with McNab after Minnie's repudiation of her confession. McNab had agreed to meet witness there at 5 o'clock; Hanford went with witness; McNab was not at Minnie's; witness made effort to get him but was not successful.

Upon going into house there was a little abuse on part of Minnie of witness for having Robinson out the previous morning; witness showed Minnie's husband copy of telegram authorizing him to grant immunity to Minnie; this was practically all that transpired at the house; there was a good deal of conversation between Sadie James, Hanford, and Minnie, but witness didn't give it any particular attention.

Witness then went to see Col. Wilson—had a letter from War Department which he desired to present. It was dark; when witness arrived at Col. Wilson's Hanford was there; he was not on porch, because he was in the house when witness got there; was not expecting to see Hanford there; met Col. Wilson formally and at suggestion of Hanford went into sitting room and talked with Mrs. Wilson and her daughter until Hanford had had an audience with Col. Wilson; then presented his compliments to Col. Wilson and told him what he had done there.

Was instructed by Washington office and by Mr. Allen that Buell and Robinson would accompany him and cooperate with him. (R. 4545–52.)

Govt. Ex. A–15 (R. 4660) is admitted in evidence, being certified copy of page 16 of Creek delivery book

(index and record of delivery of deeds for allotted lands) containing entries relating to the Thomas Atkins family. (R. 4552.)

C. B. MALCOLM:

Was introduced to Long in Tulsa by one Fox through instrumentality of Huck Rogers; told Long he thought he could be of some assistance in finding parties in Atkins case; Long told him to see what he could find and report back; saw Long later at office and told him he had found out nothing about Minnie or Tommy Atkins; Long told him not to mind about Tommy—that he supposed he died before the war—to go ahead and see if he could find Minnie; this conversation was about March, 1914; had conversation with Page first in April, 1914; witness went to office to see Long to tell him he couldn't find out anything about Minnie; in Long's absence saw Page, who asked him to find a child in that country who had been dead a good while and nobody knew much about; witness found one, reported, and Page not satisfied; found another named Atkins, reported to Page, who told him not to bother any more as he (Page) had a live Tommy, who was able to take care of himself.

Page had told witness that if he found a dead child that would suit, he (witness) would be taken care of; was paid $200 in all for his services and expenses. (R. 4559–69.)

Recalled:

Last talked to Long in 1914, summer or fall; had a talk a few days ago with Mr. Lipscomb, a banker;

denies that he stated to Lipscomb that he had a chance to make $500 to swear in this case, but it was too risky. (R. 4607–08.)

Redirect:

The matter of making any money out of his testimony was not spoken of at all in this conversation. (R. 4608.) Matter of getting money for testifying has not been discussed with anyone; no one has offered him any money to testify. (R. 4609.)

C. H. (Hook) Rogers:

Was associated with Betty Mann in investigation regarding Tommy Atkins allotment; made first trip to Leavenworth about matter in January, 1914, with Betty; went to city physician and ascertained that Minnie had had a child named Robert Lee Peterkin; made inquiries at fort in endeavor to locate Peterkin; they went to number of places in Leavenworth to find out about Minnie, but were unsuccessful; found out that Minnie did not give birth to a child at the hospital in Leavenworth; later, had dealings with Long who agreed to give witness a quarter interest in the allotment if he found Minnie Atkins; first conversation with Long was in March or April, 1914; witness told Long at that time what he and Betty had found about the birth of Robert Lee Peterkin and about Minnie being in hospital but not for childbirth.

Witness brought Betty Mann and Long together in this case; witness told Long he had a party (Betty) who had Minnie located—that was time Long offered the one-quarter interest; witness told Long Betty was

working then for Bartlett; Long wanted to know if witness could get her to turn the deal to him if she found Minnie; witness said he could. (R. 4579–84.)

Cross-examination:

Admits signing receipt for $50 in full for services. (R. 4586.)

Redirect:

Long knew witness and Betty were very friendly; receipt was prepared by a clerk in office of Gem Oil Co. and presented to witness for signature; Long witnessed signature; up to time Long went to Seattle relations between witness and Long had been very friendly. (R. 4587.)

D. G. ELLIOTT:

Attorney; had business transactions with Page relating to Sand Springs Machine Company from February or March, until September, 1914; had a conversation in summer of 1915 with Page at latter's office relative Thomas Atkins case; witness told Page Mr. Wrightsman was in the deal, and he asked Page if he would buy Wrightsman out or sell out to him; Page said he understood Trueman Nixon had a Tommy Atkins and that he (Page) had one of his own and could win with the Tommy he had; said "He wouldn't give a damn cent to sell out or buy out." (R. 4587–90.)

MITCHELL WADSWORTH:

Son of Kate Holden; Minnie and Nancy Atkins are related to him; in 1899 received a letter from Minnie Atkins from Detroit, Michigan, in which she

asked witness to file for her and Harvey and Charlie (Harrison); he applied to commission and Commissioner Bixby wouldn't let him file; didn't have letter from Minnie, had hung the coat, in pocket of which letter was, in Davis & Jones's store; somebody had taken coat, and letter was lost; told his stepfather that he (witness) could not file for "them" and that he (stepfather) might have to file for them or get in touch with them.

Up to 1898 Charlie and Harvey were kept at his mother's, Kate Holden's, from the time Minnie Atkins turned them over to her; Indian boy named Edmund Bear stayed there; no Indian boy named Tommy Atkins ever stayed there.

Has known Nancy Atkins ever since they were little children; saw her off and on when she was at Wagoner; never knew of child there with her named Thomas Atkins; never heard of any Thomas Atkins in the Nancy Atkins family. (R. 4598–4600.)

Cross-examination:

In the letter Minnie did not mention Tommy Atkins. (R. 4600.)

W. P. Z. GERMAN:

Had conversation in Leavenworth in 1916, just before taking depositions there in this case, with Dick Nichols, in National Hotel, in presence of Mr. Allen and Mr. Bagley, wherein Nichols stated in substance that Rube Smith said to him, in reference to his testimony in 1914 in State case, that he (Rube) had been over testimony of several other witnesses

and Rube told Nichols he might just as well make some money out of this, everybody else is making money and that he (Nichols) went on the stand and testified to what the others did; that they paid him five dollars and promised him more money and a trip to Oklahoma. Nichols repeatedly stated in that conversation that he didn't know Minnie Atkins (R. 4638); Nichols talked freely and voluntarily; no one told him he would go to the "pen" if he didn't change his testimony from that given in 1914 (R. 4639).

R. C. ALLEN:

Testified to same conversation with Nichols just related by Mr. German and corroborates German. (R. 4640–41.)

Cross-examination:

In conduct of case, Buell and Bartlett have reported to him names of witnesses whom Government representatives have subsequently investigated; information furnished voluntarily, Government representatives did not ask it. (R. 4642.)

Redirect:

McMillian and Cook made investigations; were employed by Interior Department, Bruff by Department of Justice, who has been working on case since May, 1916.

When he filed this suit witness had not heard of Quinton Garrett interest; afterwards, as soon as Garrett filed, witness went to Congress and sought and ultimately secured legislation withdrawing this

land from allotment; this legislation provided payment of $800 to Garrett in lieu of allotment; was vigorously opposed by counsel for Garrett. (R. 4643–44.)

R. O. LARKIN:

Lives in Platte County, Missouri; his father owned a slave, Mary Ann Larkin, who cared for him when he was a child; she married Billy Mayo, who went by name of Hunt also; afterwards, so he understands, married a Letcher; knew her when she was in Leavenworth; she moved there in 1862 or '63; witness went to Leavenworth to do marketing; saw her several times; she lived on Cherokee Street, also on Seneca Street; she was very dark complexioned—a "slick black"; was a witness for her in 1884 to prove her marriage to Mayo when she was seeking a pension; remembers her son Jim Mayo and a one-armed boy, Sammy; never knew a boy around her house named Tommy nor an Indian boy nor a boy called Indian Tommy. (R. 4376–78.)

Cross-examination:

It was in 1884 or '85 when witness saw her on Seneca Street; remembers it because after Cleveland took office in '85 woman was appointed as postmistress at Platte City. (R. 4380.)

ERNEST ENDRES:

Was reared in Leavenworth, born at 220 Cherokee Street, 1887; moved to 215 Delaware Street, one block north, year or two after; lived there until 23 years of age; played when a boy around Seneca Street and other streets in vicinity with Alva Adams,

Tommy York, Willie Warren, Robbie Conradt, Ed Baker, also Swipe Smith; did not know boy there at any time by name Tommy Atkins nor Indian Tommy or any Indian boy. (R. 4382–84.)

FLOYD HUNT:

Lived in Leavenworth; in 1897, 1898, was living there at 210 Olive Street; was about eight years old then; played with Lee and Charlie Warren, Earnest Enders, Cutter Collins, Carl Sheets, Swipe Smith, Alva Adams; boys referred to mostly lived between Seneca and Spruce, 5th and 2nd. No boy in their crowd that was an Indian, nor one that looked like one; Tommy York was only negro boy; no other boy named Tommy; never had any boy in that crowd called Indian Tommy or Commodore; never heard any boy called "Trailer"; never heard of a boy named Tommy Atkins playing with that crowd. (R. 4386–89.)

Cross-examination:

Knew another Tommy—Tommy Owens; never ran with him (R. 4391); never played in Seneca Street neighborhood.

Redirect:

No place on Seneca Street to play baseball. (R. 4391.)

[Def. Ex. B–24, R. 4958, map of Leavenworth (streets, alleys, etc.) introduced in evidence and used in witness *Hunt's* cross-examination. R. 4389–91.]

W. D. WARREN.

From 1894 to '98, when he was eight years old and up, played in vicinity of Seneca Street and around

Crilly's barn and Van Tuyl's barn; played with Alva Adams, Baker, Floyd Hunt, Earnest Endres, Tommy Owens, Tommy York, Swipe Smith, and other boys; lived at 220 Cherokee Street that time; never played with boy named Tommy Atkins, nor any colored boy named Tommy except Tommy York; never knew boy called Commodore, nor "Trailer," nor any boy that looked like an Indian; played with Crilly boys, Elof and Arthur; knew Granny Letcher; never knew or played with any boys at Granny's. (R. 4392–96.)

Cross-examination:

Boys he played with lived in the neighborhood of Main and 4th Streets and Seneca. (R. 4396.)

ANANIAS ATKINS:

Son of Dick Atkins; had a brother Thomas Atkins; he is older than Thomas, who died in 1898 at age of 13; was living near Wagoner when he died; Thomas often went to Wagoner with his father; hauled wood; they traded at Davis & Jones's store in Wagoner; mother's name Sallie Atkins; both witness and Thomas born in Missouri, went to Indian Territory when witness about 8 or 9 years old; Thomas could walk and talk at that time; has known Nancy Atkins; is his aunt; Thomas sometimes stayed at Wagoner for two or three days at a time when some member of the family went over there. (R. 4398–01.)

MARY WILSON:

Daughter of Richard and Sallie Atkins; father dead; mother living, "in Canada, they say"; had a brother Thomas Atkins, born in Missouri; Thomas, when work-

ing out near Wagoner, hauled wood to Wagoner; he was 13 years old when he died. (R. 4401.)

It is agreed by counsel that when witnesses have been examined as to testimony previously given and have denied that they testified as the stenographic transcript records them as testifying, it will be understood that the stenographers' transcript shows that they so testified. (R. 4404–05.)

The Government agrees that the Dick Atkins family were enrolled on the 1890 and 1895 Creek rolls on the Arkansas Colored Town pay roll and not on the Euchee Town, and those surviving on April 1, 1899, have been enrolled and allotted by the commission as from Arkansas Town, and that those who died before April 1, 1899, have been so adjudged by the commission and the Secretary of the Interior. (R. 4405–06.)

F. B. Fite (sur-rebuttal.)

Physician and surgeon. Tells purpose of examination made in case of childbirth; lacerations in first childbirth are of more frequent occurrence than in subsequent labor; if called to attend young woman in labor and digital examination disclosed notches in cervix he would conclude woman had given birth before. (R. 4647–48.)

If no one else around to make inquiry of, would ask patient as to any previous labor; mere fact that finger detects certain notches upon cervix and no other symptoms, would not lead him to make

positive diagnosis of a previous labor. (R. 4649–51.)

J. W. RUBLE:

Moved to Wagoner in December 1896, lived there since; knows Nancy Atkins, knew her in 1896 or 1897; doesn't recall seeing her since; child five or six years old was around with her; witness was drug clerk there; child would come to store with Nancy; never heard what his name was; boy was not Charlie or Harvey Harrison, with both of whom he was acquainted; child looked like Caucasian and Indian; no indication of other blood. (R. 4427–29.)

Cross-examination:

Saw Nancy and child for period of less than a year; didn't see child after Nancy left; never saw Harvey Harrison until recent years. (R. 4430.)

SID JOHNSON (rebuttal):

The effect of this testimony is that Lee Atkins (brother of Minnie Atkins) was killed in November, 1894. Witness relates circumstances under which he heard of the shooting of Lee. (R. 4430–32.)

○

INDEX.

Page

THE ISSUES 1

The Evidence on Behalf of Nancy Atkins..7-74

R. F. Davis (R. 1202) 7

J. E. Newberry (R. 2418).....8

Charles Bailey (R. 2427).....9

James E. Long (R. 2445).....11

Richard Birney (R. 2457).....12

Nolan Williams (R. 2465).....12

John T. Beard (R. 2475).....14

M. I. Sullivan (R. 2486).....15

A. Grant Wasson (R. 2493).....16

Andrew Jackson (R. 2500) 17

John Ford (R. 2505) 18

J. L. Dyer (R. 2519) 19

Jasper Newton Schrimpsher (R. 2523) 21

Foil M. Brady (R. 2527) 22

Kirk Turnbo (R. 2529) 23

Walter Posey (R. 2537) 24

George Williford (R. 2539) 25

Thomas Brewer (R. 2545) 26

Frank Engles (R. 2557) 26

W. A. McElroy (R. 2567) 28

J. M. Preston (R. 2575) 29

D. W. Best (R. 2582) 31

T. J. Way (R. 2591) 32

W. C. Smith (R. 2607) 32

Bob DeLozier (R. 2611) 35

Samuel McHenry (R. 2626) 36

Ellis Childers (R. 2637—Recalled R. 2649, Recalled R. 2685) 39

Nancy Atkins (R. 2697, 2775-2785)...40

Mrs. Blanche Yarboro (R. 2744).....49

J. B. White (R. 2747) 67

J. K. McLaren (R. 4406) 68

J. H. Anderson (R. 4414) 70

M. J. Phillipi (R. 4419) 70

Page

Lizzie M. Miller (R. 4422) 72
J. W. Ruble (R. 4427) 73
Sid Johnson (R. 4430) 73
Augustus A. Davis (R. 4593) 73

Evidence Against Nancy Atkins 74-96
Elnora Mayshack (Elnora Williams) (R. 2163) 74
Micco Harjo (R. 2168) 78
Eliza Sterling (R. 2179) 81
Angeline Moody (R. 2190) 82
Henry Anderson (R. 2196) 83
Dora Smith (R. 2208) 85
Patsy Miller (Patsy Overton) (R. 2211) 86
Henry Kidd (R. 2220) 87
Lula Smith (R. 2223) 88
Martha Hardridge (R. 2233) 89
Patsy Jenkins (R. 2235) 90
Sarah Coats (R. 2241) 91
Cheney Trent (R. 4179) 91
Anderson Childers (R. 4291) 92
T. Howard Morton (R. 4298) 93
Jim Childers (R. 4300) 94
Ananias Atkins (R. 4938) 95
Mary Wilson (R. 4401) 95
Charles Harrison (R. 4528) 96

Analysis of the Nancy Testimony, Pro and Con 97-114

Conclusion 114-123

TABLE OF CASES.

Baker v. *Schofield*, 234 U. S. 114.....5
Bartlett v. *Atkins*, 169 Pac. 1076.....112
Gilson v. *United States*, 234 U. S. 380.....5
Ross v. *Stewart*, 277 U. S. 530.....97
Washington Security Co. v. *United States*, 234 U. S. 76 5

In the

Supreme Court of the United States

THE UNITED STATES OF AMERICA, *Appellant*,

vs.

MINNIE ATKINS, *ET. AL.*, *Appellees.*

No. 253

NANCY ATKINS, H. A. RIDGWAY, GUARDIAN OF NANCY ATKINS, *ET. AL.*, *Appellants*,

vs.

MINNIE FOLK, *NEE* ATKINS, *ET. AL.*, *Appellees.*

No. 254

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF ON BEHALF OF APPELLEES.

THE ISSUES.

Beginning on page 1 of the brief filed in behalf of Nancy Atkins, and for many pages following, there is a statement of facts which we think is not accurate, but in view of the undisputed facts in this case we deem it unnecessary to review in detail and modify the statements so made in such brief.

The Government of the United States originally instituted this suit. The purpose of the Government's bill was set to aside the patent to Thomas Atkins, No. 7913. The Government, after various allegations, finally settled upon the nonexistence of Thomas Atkins as the basis of its attack. It claimed in its bill that Thomas Atkins who was enrolled by the Dawes Commission as the son of Minnie Atkins, was a myth; that he never, in fact, lived, and that for that reason the judgment of the Dawes Commission enrolling him was void, on the theory that a patent to a fictitious person could not be permitted to stand. The Government when it brought this suit made Minnie Atkins a party defendant, among others, and made Nancy Atkins also a party defendant, asserting in its bill that Nancy was claiming some interest in some way in the property covered by the patent.

The case was tried out and the Government was defeated, both on law and facts. Judge Campbell, the trial judge took up the question as to who was the mother of Thomas Atkins enrolled. The trial judge held, after months of examination of the very voluminous record in this cause, that Minnie Atkins was the mother of Thomas Atkins

enrolled, and held that it was doubtful whether Nancy Atkins ever had a son at all and decided that Nancy was not the mother of the Thomas Atkins in question and rendered judgment against Nancy.

This case went to the Circuit Court of Appeals for the Eighth Circuit. That court fully examined the record passed upon by Judge Campbell; affirmed the judgment of Judge Campbell *in toto* and held that Minnie was the mother of the Thomas Atkins in question and that Nancy had no claim, by virtue of parentage of said Thomas Atkins, to the property in controversy. So that we start out with the fixed fact that two courts of competent jurisdiction have passed upon the questions of fact which Nancy Atkins now asks this court to review. It has become, as we understand it, the settled doctrine and practice of this high court never to change or modify judgments on the facts of a case, when those judgments have been rendered by two courts passing upon the same question and reaching the same result.

The Circuit Court of Appeals is, as we understand it, in a sense, an arm of this Honorable Court, and when that Court in reviewing the judgment of a trial court on questions of fact

has reached the same conclusion as the court below, it is practically conclusive of that question of fact.

Counsel for Nancy Atkins recognize the force of this rule but seek to meet it and avoid it by asserting that there was no testimony before the trial court establishing Minnie Atkins as the mother of Thomas and a vast array of testimony in favor of Nancy establishing her parentage of said Thomas Atkins. This bold and unqualified assertion for Nancy, necessarily assumes that the trial court and the Circuit Court of Appeals have reached a conclusion in favor of Minnie Atkins as the mother of Thomas Atkins without any material evidence upon which to base that conclusion. We indulge the belief that this bold statement will find little sympathy in this court because this is a case of conflicting facts covering a large area. Both the trial court and the Court of Appeals reconcile this conflict and adjudge Minnie to be the mother of Thomas Atkins.

It seems to us that this rule of decision and practice adopted by this Honorable Court is not only eminently wise, but ought to be adhered to, strictly. Primarily, this court passes upon

the law of a case and seldom enters into an extended consideration of the evidence, when the result of that evidence has been foreclosed by the opinions of two courts having jurisdiction of the case. Of course, in an equity case, this court may examine the record to see if justice has been done. But we understand the rule to be that this court approaches that record, where it has been decided by two courts, with every presumption in favor of the correctness of the conclusions reached by such courts upon such evidence.

To state the case in another way, the judgment of the two courts upon the evidence in a given cause must be clearly and palpably erroneous before this Court will reverse their judgments.

We think it is unnecessary to cite the many opinions of this Court sustaining this doctrine. In the cases of *Washington Security Company* v. *The United States*, 234 U. S. 76; *Gilsom* v. *The United States*, 234 U. S. 380; *Baker* v. *Schofield*, 234 U. S. 114, and the many cases cited therein, this matter is thoroughly examined and the rule is announced positively, and without equivocation.

The record in this case covers many thous-

ands of pages. It contains the evidence, as shown by the record, taken in many of the states of the Union. Both depositions and oral testimony were used, there being scores and scores of witnesses testifying in person before the trial judge. The conflict in the evidence really was as between the Government and Minnie Atkins as to whether her son Thomas ever lived. But we assert that there was no practical conflict in the evidence as to Nancy Atkins. The evidence is overwhelming and compulsive as against her claim.

Nancy Atkins was a sister of Minnie Atkins and was induced to set up a claim as the parent of Thomas Atkins, number 7913 on the Dawes Commission Roll. We believe if this Court goes into the evidence in this case it will conclude, without hesitation, that Nancy's claim is fraudulent and that her conduct and testimony show it to be fraudulent, and we are sure the Court will further find that she never had a son; that she never had but one child and that was a girl child, still-born.

The counsel for Nancy Atkins have undertaken to state the testimony for Nancy and against Minnie, but have not stated the testimony against Nancy. We apprehend that this Court

will, at the outset, determine Nancy's case on its own strength and not on the weakness of others. In other words, Nancy Atkins appeared in the trial court claiming to be the mother of Thomas Atkins and known as a citizen of the Creek Nation. It was incumbent upon Nancy Atkins to prove this fact,—to convince the court that she was the mother of Thomas Atkins. She failed either to convince the lower court or the Circuit Court of Appeals of that fact.

We therefore beg leave to submit to the Court what we believe to be a fair and succinct statement of the testimony for and against Nancy Atkins.

The Evidence On Behalf Of Nancy Atkins.

R. F. Davis (Rec. p. 1202):

Engaged in the wholesale grocery business in Muskogee; lived in Wagoner from 1888 or 1889 until he moved to Muskogee; was connected with the Davis and Jones Mercantile Company; first became acquainted with Nancy Atkins when he went to Wagoner; testified that she was frequently around witness' store; remembers of her being in a pregnant condition; that some time afterwards he saw her around the store with a boy that was large enough to walk that he sup-

posed was her child. On cross-examination testified that he never knew of Nancy Atkins being in a family way but once; never heard the name of the child called until recently in discussing the present litigation; didn't know whose child it was that he saw with Nancy.

J. E. Newberry (Rec. p. 2418):

Sixty-five years of age; resided in Wagoner, Oklahoma, since March 27, 1890; lived at Barnard hotel when he first went to Wagoner; Nancy Atkins was working in the kitchen of the hotel at that time and appeared to be in a family way; did not know anything of her having a child except what was told him.

Next saw Nancy Atkins about a month later when he was delivering some furniture to a woman by the name of Walker, and Mrs. Walker asked him, "Do you want to see Nancy's baby?" and he went in the house and saw Nancy in bed and recognized her; this was in September, 1890. On cross-examination was asked:

"Mr. Newberry, did you know a little boy around Wagoner that you saw with Nancy Atkins?" and he answered:

"I couldn't say that I ever saw him with her."

Describes a boy as some five or six years

old he saw around Betsey Birney's, but never knew what the boy was called; saw Nancy Atkins around Betsey Birney's quite often.

CHARLES BAILEY (Rec. p. 2427):

Fifty-eight years old; resides in Sand Springs, Oklahoma; lived in Wagoner from 1888 to 1907. Knew Nancy Atkins when she was going to school at the old Tullahassee Mission and was afterwards acquainted with her when she moved to Wagoner in 1888; Nancy first worked at the Section house and afterwards lived with Betsey Birney; witness, at this time, was working for the Davis and Jones Mercantile Company. Testified that she was in a pregnant condition but is not positive whether it was in 1889 or 1890; knew that she had a child and in reply to the question as to when it was born answered: "It was born just back of the Davis and Jones mercantile house, over in what was the prairie; that there was no street or anything there at the time—there was just prairie up to Davis and Jones' yard and gin and this tent was just west of that a little ways." Did not see Nancy or the baby at the time of the birth, and information was conveyed to him by an Indian girl who came into the Davis and Jones store; saw Nancy about a week afterwards when she was

carried from the tent to Betsey Birney's house; saw her subsequently a number of times at Betsey Birney's house; never saw the child until it was probably a month or two old when he saw it at Betsey Birney's house; don't remember whether the child was with Betsey Birney or Nancy Atkins; continued to see the child around Betsey Birney's for four or five years; heard that the child died; that the child was a boy called Tommy Atkins. Knew Minnie Atkins, a sister of Nancy Atkins, and knew her two boys, Charley Harrison and Harvey Harrison; that Charley Harrison was brought to his home in 1895 or 1896 and stayed there until he was about twenty-two years old—something like five or six years; that he had some correspondence with Minnie Atkins and that she never mentioned a child by the name of Tommy Atkins. The last time he remembered seeing the boy Tommy Atkins around Wagoner was three or four years before he filed for Charley Harrison and the boy was then living with Betsey Birney.

On cross-examination he was confronted with his testimony in the case in the state court when he stated that he only knew of Nancy Atkins having a child from what he was told, but that he saw a child with her who must have been a year or two old the first time he saw it.

Further examined, he says he didn't know whether the child he saw at Betsey Birney's was one, two or four months old; afterwards remembered seeing a boy around the streets of Wagoner called Tommy Atkins, until he was five or six years of age; admits that he never went to see the child that he heard was born to Nancy Atkins in the tent back of Betsey Birney's house and in reply to the direct question:

"You don't know whether that was Nancy's baby, or Betsey Birney's child or Betsey Birney's grandchild?" he answered: "No, I don't know."

JAMES E. LONG (Rec. p. 2445):

Fifty-four years of age, resides at Chelsea, lived in Wagoner County from 1896 until 1916; knew Nancy Atkins with whom he became acquainted about a year after moving to Wagoner; knew that she had a child that was a mulatto looking boy about five or six years of age when he first became acquainted with him; continued to see him about Wagoner with Nancy Atkins and another woman named Maggie Martin for four or five years; he was City Marshal of Wagoner from April, 1897 to 1898; heard that the child died in 1901 or 1902.

On cross-examination stated that he knew Nancy Atkins very well and she was a police

character and had often been in his charge; never had any personal knowledge of Nancy Atkins having a child; knew that she was living in 1897 on Church street in the negro part of town; that there were two women lived in the house—Nancy Atkins and Maggie Martin; that Maggie Martin had two children, both girls, and witness saw the boy running around the neighborhood with these two girls; that in his opinion the boy was a mulatto; that the boy was about six or seven years of age, but he did not personally know whose child it was; continued to see Nancy around Wagoner from the time he was City Marshal in 1897 until 1901 or 1902. Asked where he heard the name "Tommy Atkins", he said he heard Nancy call the mulatto boy Tommy; never heard of Nancy ever having any other children. Admits that he was convicted for embezzlement while occupying the office of Sheriff of Wagoner County in 1913.

RICHARD BIRNEY (Rec. p. 2457):

Lived in Wagoner when a child and until about 1894 and knew Nancy Atkins; knew that she had a child at his mother's house; he was just a kid when the child was brought to his mother's house and don't know how old it was; that he saw the child every day for some time and

that it was a pretty good sized child the last time he saw it. He testified specifically as follows:

"Q. Now what was this boy called?

A. Tommy Atkins was what they called him when he was there.

Q. Did you ever see him with his mother?

A. Yes, sir. I saw him when they brought him there.

Q. How did she bring him there?

A. Why, they hauled him there in a wagon when they brought him there.

Q. Well, was he large enough to walk?

A. No, sir.

Q. Did she have it in arms?

A. Yes, sir; that is the way that she brought it there."

On cross-examination testified that they brought Nancy in a wagon from up on the hill about three-quarters of a mile from his mother's house; saw Nancy carried from the wagon into the house; she was on a cot and that his mother carried the baby into the house. That at the time of this occurrence he was about twelve years of age; witness gives his present age as thirty-nine; never heard of Nancy's baby being born in a tent near his mother's nor at Elnora Williams.

Witness admits to having served a term in the penitentiary on the charge of larceny.

NOLAN WILLIAMS (Rec. p. 2465):

Lived in and around Wagoner for twenty-four years. Became acquainted with Nancy Atkins some time in the nineties when he was trading at Davis and Jones' store. Was asked the direct question:

"Do you know whether Nancy had a child or not?" and replied:

"Well, I know there was a child with her that she said was hers; I don't know whether she had any or not."

First saw the child with Nancy Atkins when the child was about a year old; continued to see him after that for a year or two; the child appeared to him to be between an Indian and mulatto; witness, during a good deal of the time he knew Nancy Atkins, lived in the country and was in Wagoner on business or to trade; he got information that it was Nancy's child from old man Birney; never heard of the child dying.

On cross-examination, witness admits that he never did live in Wagoner at the time of the occurrences referred to but lived twenty-five miles west of Wagoner in the Choska bottoms and

went to Wagoner to trade and that the only definite recollection he had with reference to the child was that one time when coming out of Wagoner, he saw the boy with Betsey Birney and Nancy Atkins and that Nancy told him it was her boy and that old man Birney also told him it was Nancy's boy.

JOHN T. BEARD (Rec. p. 2475):

Fifty-eight years old, lives in Wagoner; lived there for thirty years with the exception of part of years 1915 and 1916; formerly engaged in the hardware business, but when he first went to Wagoner, August 4, 1887, was working for the Iron Mountain railroad; knew Nancy Atkins; first became acquainted with her in the latter part of 1889 or 1890; that she was on the streets of Wagoner and people were talking about her, about the way she looked and her condition; remembers her being sent to the penitentiary and never knew of her giving birth to a child; did, however, observe that she was in a pregnant condition and often saw her after that time carrying a child which was about two or three months old the first time he saw it; that Nancy told him it was her child and that she had called it Tommy; that he continued to see the child around

Wagoner until about 1897 or 1898, when he appeared to be seven or eight years old—a pretty good sized boy; that he saw him around Schrimpsher's store; remembers seeing the child in 1898 or 1899 and heard a report that he was dead. Never knew Minnie Atkins; that Nancy Atkins, at the time he saw her with the child, stayed with some negroes by the name of Birney back of the Davis and Jones' store; that the child was a mulatto and remembers contributing to the funeral expenses of the boy in 1901 or 1902.

M. I. Sullivan (Rec. p. 2486):

Fifty-three years old; lived in Wagoner since 1892; stayed there until 1895 and was gone for five years, returning in 1900. Knew Nancy Atkins, first becoming acquainted with her in 1902; knew that she had a child—when the court interrupted him and asked:

"Q. Do you know whether she had a child?

A. I know what she said; she said he was hers."

When he first saw the child it was toddling around; witness at the time was engaged in the retail mercantile business and Nancy often came in the store with the child; don't remember the name of the child or what Nancy called it; don't

remember ever seeing the child after he came back to Wagoner in 1900.

On cross-examination testified that Nancy Atkins associated almost exclusively with negroes and that she was a town character. Witness had no recollection of Nancy's being arrested or sent to the penitentiary.

A. GRANT WASSON (Rec. p. 2493):

Fifty-three years of age, lived in the neighborhood of Wagoner for twenty-nine years and was living in the town of Wagoner in 1889 and 1890; first became acquainted with Nancy Atkins in 1889; had no recollection of ever seeing her in a pregnant condition but remembers her being with a child that she called Tommy and that she claimed was hers; that the child was about two years old when he first saw it; the child was then playing with some negro children near the Davis and Jones' store; remembers seeing the child around Wagoner up until 1895 or 1896 when he moved away from the town; but to the best of his recollection the child was a good sized boy about four or five years old when he last saw him; had the appearance of being mixed between an Indian, a negro and a white; does not remember

seeing him after 1895 or 1896 and does not know or remember hearing whether he died.

On cross-examination, fixes the time that he first saw Nancy as 1889 by reason of the fact that he came from Baker City, Oregon, in 1888 and that it was the next year that he saw Nancy, only had one conversation with her when he saw the boy playing with negro children and asked Nancy if they were her children and she said, "None of them—only Tommy, this little boy."

ANDREW JACKSON (Rec. p. 2500):

Fifty-one years of age, lived in the neighborhood of Wagoner for forty-seven years; was not living in Wagoner in 1888, 1889 or 1890; did not move into the town until 1902; knew Nancy Atkins and first remembers seeing her around Wagoner in 1892 and '93; never had any real acquaintance with her but would pass her on the streets; remembers her having a boy with her who was about three or four years old and wearing dresses the first time he saw the boy; that this was one time when he was leaving the Davis and Jones' store and after passing the blacksmith shop came across a kid out in the road playing and asked Nancy, "Is this your kid?" and she said, "Yes", and witness replied "You had

better keep him out of the road or he will get run over." Witness is very vague and indefinite about ever seeing the child after this occurrence. Remembers contributing to a collection taken up in 1902 or 1903 to bury somebody, but don't remember who it was. On cross-examination fixes the time of the incident of seeing Nancy with the child as the spring of 1892 or 1893 and as occurring a little northwest of the Davis and Jones' store.

JOHN FORD (Rec. p. 2505):

Fifty years of age and came to Wagoner in 1887, when the Iron Mountain railroad was building through Wagoner; stayed there twenty or twenty-five years; knew Nancy Atkins; first became acquainted with her in 1888; saw her in a pregnant condition, to the best of his knowledge, in 1889; remembers that she had a child born to her in a tent back of the Davis and Jones' store. Saw the child two or three days after it was born at Betsey Birney's; that the child was in bed with Nancy; saw the child mighty near every day and night for a considerable time afterwards, as it was his custom to go to Betsey Birney's to gamble; supposed he must have seen the child around Birney's for a year after it was

born; child had the appearance of an Indian; remembers seeing him after that around Wagoner; the child appeared to be eight or nine years old the last time he saw him about 1899; heard that he was dead and gave twenty-five cents, which he understood was to help bury Tommy Atkins.

On cross-examination, fixes the time he went to Wagoner by his marriage, which occurred November 4th, 1887, and then weakens and is unable to say whether he was married in 1886 or 1887; gives the names of George Yates, John Ross, Tom Mayberry and Anthony Mayberry as the other negroes who used to shoot craps with him at Birney's; that they usually gambled in the north front room of the house; describes the house as a "little old piece of a house—cabin—house built that way with another 'L' on it and we would be in this room there and Nancy would be in this room back this way"; that Nancy first lived in a tent and afterwards moved in to the back of the house; saw Nancy living in the tent before she moved into the house and the baby was nursing at Nancy's breast when he first saw it; that the weather was cool when Nancy was moved from the tent to the Birney house. Fur-

ther cross-examined, testified that he saw the baby laying in bed with Nancy at Betsey Birney's house; that John Galley, Tom Mayberry and Anthony Mayberry were often there with him. This witness admits that he has been in jail two or three times for fighting or minor violations of law, but was never sentenced to the penitentiary.

J. L. Dyer (Rec. p. 2519):

Fifty-eight years of age; lived in the neighborhood of Wagoner since December, 1889; never lived in the town, but about three and one-half or four miles out of town; first knew Nancy Atkins in the winter of 1890 shortly after he moved to that neighborhood; saw her on the streets of Wagoner with a child and then missed her for a few months; remembers her being sent to the penitentiary and that she was gone eight or nine months; saw her with the child in Wagoner before she went to the penitentiary; that the child was about three or four months old when he first saw it; that he continued to see the child around Wagoner until it was nine or ten years old and that it was called Tommy; heard that the child was dead; would be in Wagoner two or three times a week and remembers noticing the child around Schrimpsher's butcher shop; ad-

mits, on cross-examination, that he is the Jim Dyer who was convicted for constructively being present at the Blackstone train robbery; that he was about thirty-one or thirty-two years old when he first met Nancy Atkins and at that time he was pretty wild and frequented the gambling shops of Wagoner where he would often see Nancy; that Nancy was carrying the child when he first saw it and that she was living at the Birney house.

JASPER NEWTON SCHRIMPSHER (Rec. p. 2523):

Seventy years of age and went to Wagoner in 1890 and lived there until about twelve years ago; knew Nancy Atkins who was related to witness' first wife; never remembers her being in a pregnant condition; that she had a boy running around town with her that she called Tommy Atkins and said was her boy; that the boy was six or seven years old and that at the time he was running a butcher shop and merchandise store and Nancy would come in the store with the boy and one day she said: "If I send this little boy up here, why let him have it and I will pay you"; that the boy was about eight years old the last time he saw him and he does not know what became of him; describes the boy's appearance as

being about half white and half Indian. On cross-examination admits knowing the other members of the Atkins family, Minnie and Lee, and that the boy he saw in Wagoner was about six or seven years old the last time he saw him; that he was not particularly concerned with Nancy or her child—had no personal knowledge that it was Nancy's child.

FOIL M. BRADY (Rec. p. 2527):

Commonly called Bill Brady, sixty-one years of age, and lived in the neighborhood of Wagoner since 1881; knew Nancy Atkins; first became acquainted with her in 1889; fixes the time as being shortly before the $29.00 payment in 1890 when he saw her around McAnally's hotel where she was a dish-washer and there was a little boy about two or three years old crawling around the room and witness asked Nancy if it was her boy and she said, "Yes", and that his name was Tommy Atkins; that he was back in Wagoner about a month later at the Brown hotel and saw Nancy and asked her how her boy was getting along and she told him the boy died; that this conversation was before the $29.00 payment. On cross-examination fixes the $29.00 payment as 1891 or 1892; reiterates that the child was two

or three years old when he first saw it and that Nancy told him it was dead about a month later and is positive that this all occurred before the $29.00 payment.

KIRK TURNBO (Rec. p. 2529):

Lived in the vicinity of Wagoner since 1892 with the exception of four years he was in Texas in 1906 to 1911; first became acquainted with Nancy Atkins shortly after he came to Wagoner; that he was employed on J. W. Gibson's ranch and one day when he was having some horses shod in Wagoner saw Nancy on the street hollering for a boy; that he heard her inquire, "Have you seen anything of my boy, Tommy?"; thinks that at the time she was living at Betsey Birney's and the boy was about ten or eleven years old when he last saw him; that he was a small, weazened looking child; remembers them taking up a collection to bury a child whom he was told was old Nancy's boy, Tommy Atkins.

On cross-examination, said that he just happened to know Nancy as a character around Wagoner; did not know the child was her boy but saw the child with her and supposed it was her child; that the matter of Nancy's child had been one of discussion around Wagoner for the

last three years and that he had been asked about it a number of times; had heard different stories by different parties. Fixes the time that he first saw the boy as 1892 when he was a small, toddling child about a year old; that he was appointed Deputy U. S. Marshal in 1892 and then corrects it to 1893; he was further cross-examined with reference to his employment and discharge as a deputy marshal.

WALTER POSEY (Rec. p. 2537):

Fifty-seven years of age; lived in the neighborhood of Wagoner since 1891; first became acquainted with Nancy Atkins in 1891 or 1892; saw her in Wagoner with a child that she said was hers; the first time he saw the child was at the Davis and Jones' store; afterwards saw it playing around with the Birney children; thinks the last time he saw the child was in 1900 or 1901, when he was about ten years of age; heard that he was dead and never knew what became of him; only remembers seeing the child a few times with Nancy Atkins and that the child was called Tommy Atkins. On cross-examination, says the boy was about four or five years old the first time he saw him; that was in 1891 or 1892, but that he might be mistaken about the dates.

GEORGE WILLIFORD (Rec. p. 2539):

Fifty-five years of age, lived in Wagoner for thirty years; first became acquainted with Nancy Atkins at the McAnally hotel about twenty-two or twenty-three years ago; remembers seeing her in a pregnant condition and remembers her being sent to the penitentiary; that she was pregnant before being sent to the penitentiary; never personally knew of her having a child; saw a child with her between two or three years old that she called Tommy; saw it once or twice in town with Nancy; don't remember seeing the child after it was two or three years of age and never knew what became of it. On cross-examination cannot fix year he first met Nancy Atkins but insists it was twenty-two or twenty-three years ago; does not remember any of the Birney children; that Nancy never talked to him directly about the child; that he saw the child with her and thinks it was about two or three years old when he heard she went to the penitentiary.

THOMAS BREWER (Rec. p. 2545):

Forty-five years of age; lived in Wagoner for about five years; lived there about 1899 or 1900; knew Nancy Atkins long before he moved to Wagoner; that he lived in the country but did

his trading in Wagoner at the Davis and Jones' store; had been trading in Wagoner ever since there had been any settlement there; first remembers Nancy Atkins a year or two before he moved to Wagoner; never saw her in a pregnant condition; remembers a child that he was told was Nancy Atkins' kid; that he was a good-sized boy running around and talking when he first remembers him; that he played with the nigger children around Wagoner; saw him with Nancy a number of times; saw him around the Davis and Jones' store; that he appeared to be a molasses colored kid, part Indian, "wasn't white and wasn't nigger"; that the boy was known as Tommy Atkins and that he heard the boy was dead along about 1901 or 1902, but didn't pay much attention to it; that witness was feeding a number of cattle in Wagoner and the boy would come to his place to get milk. On cross-examination said he was living in Wagoner when the boy died and had been there two or three years—he never paid any attention to the boy—just remembers seeing him around Wagoner; that he often passed the Birney house where Nancy was living and would see the boy playing there with negro children; that Nancy was living at the Birney

house when the boy died; just heard that Tommy Atkins was dead—didn't pay any more attention to it; don't know whether she lived in the house or not—just saw her around there; that the boy was pretty well grown when he first saw him—appeared to be about four or five years old, and that was when he first moved to Wagoner in 1900; not positive whether it was 1899 or 1900.

FRANK ENGLES (Rec. p. 2557):

Fifty-five years of age; moved with his family to Wagoner in January, 1891; prior to that time had lived at Pryor Creek; and used to haul lumber from Wagoner to Pryor Creek; came to Wagoner himself in December, 1890, and moved his family there in January of the next year; knew Nancy Atkins; thinks he first saw her five or six months after he moved to Wagoner; never remembers seeing her in a pregnant condition; saw Nancy with a boy; saw her carrying a boy in her arms and leading it around; the boy seemed to be about a year old—just beginning to walk when he first saw the child; was a dirty looking kid, in awful shape, filthy and ragged; often did repair work around the Brown hotel and Nancy Atkins was living in a little servant's house behind the hotel a great deal of the time;

that she did laundry work and scrubbing a great deal of the time; that he would see the child there with her and that he afterwards opened a butcher shop up town and that Nancy would come in the shop and bring the kid with her; that Nancy was a pitiful character and he helped her at times; never knew what became of the child; saw it around Wagoner until it was five or six years old; left Wagoner in the latter part of 1900 or early part of 1901 and moved to Sapulpa. Upon being examined by the Court, says that the first work he did at the Brown hotel was in 1892 and that he did work there from 1892 up to 1899, and, in fact, until he left Wagoner; says that he remembers seeing Nancy around the kitchen and dining room and saw the boy around with Nancy and saw them eating together.

W. A. McElroy (Rec. p. 2567):

Forty-nine years of age; lived near Coweta, west of Wagoner from 1889 to 1901; was in the cattle business; went to Wagoner a good deal; knew Nancy Atkins; first remembers seeing her about 1890; never remembers seeing her in a pregnant condition; but heard the report that she had a child; heard this child was born back of the Davis and Jones' store and they took up a

collection to take care of Nancy and the child; that this collection was taken up in the Davis and Jones store, and that he afterwards saw Nancy with the child and she said it was her child—her son; said he never talked to her about it; that he just understood it was her son; that he continued to see the child with Nancy around the Davis and Jones' store until he left that neighborhood in 1901; that the last time he saw the child he would take it to be a boy about seven or eight years of age; never heard what became of the child; generally understood the child was named Tommy Atkins, at least, that's what they called the child around Betsey Birney's; would go to Betsey Birney's to round up negroes he had working for him who would come into Wagoner. On cross-examination, witness said he never paid much attention to Nancy and don't remember whether the time he contributed at Davis and Jones' store was to bury Nancy's baby or not—just heard that she was in a destitute condition; that he would go to Betsey Birney's in 1896, '97 and '98 to round up the boys that worked on his ranch and had no recollection of seeing the child prior to the time he first saw him at Betsey Birney's house; that the child appeared to him to be

part Indian and part white; had tolerable light hair and was about seven or eight years old.

J. M. PRESTON (Rec. p. 2575):

Fifty-four years old; lived in Wagoner for twenty-three years; first went there in 1893 or 1894; witness is a building contractor; knew Nancy Atkins; first became acquainted with her in 1894 or 1895; saw her with a child in the Davis and Jones' camp yard; the boy then appeared to be five or seven years old, medium height and molasses colored hair, a little wavy; Nancy called him Tommy and he talked to Nancy about the child and she said it was her child; asked her who was his daddy and she said, "Well, you might know", or something to that effect—"anyhow, he was a white man's child"; that this occurred in 1894 or 1895; that he was working in a lumber yard that used a part of the Davis and Jones' camp yard. On cross-examination says he worked in the lumber yard for about a week and never remembers seeing the boy except the time he worked there, but then saw him, he thinks, every day.

D. W. BEST (Rec. p. 2582):

Sixty-six years of age; lived in Wagoner since 1895; became acquainted with Nancy Atkins

shortly after he moved there—probably in 1895; saw her with a child that he supposed was hers—a little fellow, "don't know whether you'd call him mulatto, nigger, part Indian or what he was—anyway, he was not a white child"; judged he was about four or five years old when he first saw him and that was on Cherokee street in front of John Easton's blacksmith shop; remembers seeing the boy up until 1898 or maybe 1900; never knew what became of him, but was told that he died; thinks this was in 1899; last remembers the boy when he appeared to be nine or eleven years old. On cross-examination details incident of first time he saw Nancy Atkins at Easton's blacksmith shop.

T. J. Way (Rec. p. 2591):

Postmaster at Haskell; lived in the neighborhood of Haskell thirty-six years; in the cattle and farming business; knew Tom Holden and his wife, Kate Holden; they lived about three-quarters of a mile from his place north of Haskell; often went to the Holden place; remembers of children being there other than the Holden children; says that the children were Charley Atkins and Harvey Atkins and Tommy Atkins; that Charley Atkins and Harvey Atkins came there

first and that Tom and Kate Holden told him them were Minnie Atkins' children; that Tommy Atkins was there later; that he saw Nancy Atkins at Holden's at one time—possibly at different times—and that the Holdens said Tommy was Nancy Atkins' child; fixes the time of this occurrence as 1899 or 1900; relates the circumstances of Tommy coming to Holden's; that Tom Holden had come over and borrowed witness' buggy and said he wanted to go to Wagoner to get little Tommy and witness asked him who it was and Holden said it was Nancy Atkins' child; that it was his understanding from Holden that it was Nancy Atkins' child and that she wasn't taking care of the child and that witness let Holden have the buggy and he went over to Wagoner and brought the boy home; that witness was over at Holden's a few days later and Holden told him all about the boy; that Kate Holden told him the same thing; that he later talked to them at different times; that after the boy Tommy had been around Holden's for quite a while Nancy Atkins came to Holden's; Tom Holden introduced witness to Nancy Atkins as being "Tommy's mother"; that Nancy stayed at Holden's for a few days and then went away; that Kate Holden afterwards told witness that Nancy had come over

to take the boy; that they wanted to keep him; that Nancy wouldn't take care of him, and possibly a month later Nancy came back and took the boy Tommy away with her. Witness was examined by the Court and fixed the birth of his first child in July, 1898. Said that Charley and Harvey were continuously at Holden's for a couple or three years. On cross-examination witness stated that the boy Tommy had been at Holden's two or three months before Nancy came and she stayed three or four days—might have been eight or ten; that she did not take the boy with her as the Holdens insisted on keeping him; that the boy Tommy appeared to be about the same age as Harvey—perhaps Charley was a little older; described the boy Tommy as an Indian boy, dark but not black hair, and that he appeared to him to be about a half-breed Indian. On being questioned by the Court witness said the boy must have been seven or eight years old; appeared to be intelligent but did not look anything like the other two boys, Harvey and Charley; the boy Tommy was about the some age as Harvey and that Charley was older; describes the Nancy Atkins that he saw at Holden's as being pigeon-toed and cross-eyes; never knew

Nancy until she came to Tom Holden's—never saw her before that he remembers; never heard of her and never heard of her having a child. During the cross-examination of this witness Nancy Atkins came into the court room and the witness identified her as the woman he saw at Tom Holden's.

W. C. SMITH (Rec. p. 2607):

Commonly known as Bill Smith; fifty-nine years of age; went to Wagoner in 1898 and lived there nineteen years; was engaged in the drug business; first saw Nancy Atkins one day in his store; she had a yellow headed kid, probably four or five years old with her; asked Henry Anderson, his negro porter, who the woman was and he said Nancy Atkins; Anderson told him the boy was Nancy's kid and that she associated with negroes; saw her and the child on the streets and in his store for two or three years off and on; also saw the boy with an old negro named Snow; thinks the last time he saw the boy was in 1901, 1902 or 1903—don't remember just what year; witness opened his drug store in 1899. On cross-examination says the boy was three, four or five years old the last time he saw him; said he was walking but knows that he could not have been

as old as seven years; positive that he must have been about three, four or five years of age. Witness admits having been convicted of selling whiskey and also to having been arrested for fighting.

Bob DeLozier (Rec. p. 2611):

Negro, fifty-five years of age; lived in Wagoner for twenty years; went to Wagoner at the time the Iron Mountain railroad was being built from Fort Smith and became acquainted with Nancy Atkins about the second year he was there; she was living in a tent back of Betsey Birney's house and she had a child born to her while living in that tent. That he saw the child the morning after it was born; that he was living with Bob Childers at the time and Childers' wife sent him down to the tent to take some grub to Nancy, and that he went into the tent, saw Nancy laying on the bed and the child laying there with her; that he didn't talk to her—told her that he had some grub Mrs. Childers had sent her and he saw the child after that at different times around Wagoner for nine years—saw it with Nancy Atkins and that the child died when it was between nine and ten years old, and was buried northeast of Wagoner; that he helped dig the grave; that there were several men present at the time the

child was buried; could not remember their names; that an old darky named Monday Barnett conducted the burial ceremony; Nancy was not at the burial; after the child was born to Nancy he helped move her into Betsey Birney's house from the tent; that she was in bed in the Birney house about two weeks; remembers Nancy being arrested and taken to Fort Smith; thinks this was about three months after the child was born; after Nancy was arrested Betsey Birney took care of the child for a while and it lived first one place and another with negroes; after Nancy came back from the penitentiary saw the child with her around the McAnally hotel when Nancy was working in the laundry; that the boy was called Tommy Atkins. On cross-examination, witness said the boy was buried in a coffin made in a lumber yard; don't remember what kind of clothes he had on when they buried him; unable to fix the time of the burial; unable to tell anything that happened in 1900, 1901 or 1902; cannot definitely fix the date of the birth of Nancy's child, but knew him from the time he was born until he died; also talked with him and saw him around town and denies that anyone talked to him about his testimony and when advised by the Court that it would be proper for him to

answer such a question still denied that he had talked about his testimony. Admits that he served three penitentiary sentences, one in Oklahoma, two years for forgery; one in Ohio for a year and a day for forgery and one in Detroit for a year and a day; also admits being in the U. S. jail for four months; says he don't remember what it was he took to Nancy but thinks it was some soup and that Nancy was moved to the Birney house the next day after the child was born; that they carried her on a cot; asked about the Birney children says he knew Henry and Dick Birney; that he went to the Birney house often to shoot craps; thinks Nancy was abed a couple of weeks before she got up and was walking around; that she then went back to the McAnally's hotel to work and that the child stayed at Birney's; afterwards lived first one place and then another—at the Wilhams' and also at Mandy Barnett's; don't know at whose house child died; last time he remembers seeing the boy Nancy was working in the laundry at McAnally's and the boy was at Betsey Birney's; that he guessed that he must have been in the penitentiary part of the time the boy was living in Wagoner but knows that he was there when he died; was ques-

tioned as to his testimony in the state case at Sapulpa. (Prison records of Bob Lozier introduced in evidence; Forth Smith jail, December 20, 1893, to April 18, 1894, larceny; U. S. penitentiary, Brooklyn, N. Y., April 20, 1894, to July 29, 1896, larceny; U. S. Jail Muskogee, I. T., June 12, 1898 to December 24, 1898, for introducing and selling liquor; U. S. Jail Muskogee, I. T., May 7, 1900, to November 4, 1900, larceny; U. S. penitentiary, Columbus, Ohio, November 5, 1900, to November 25, 1904, larceny).

SAMUEL MCHENRY (Rec. p. 2626):

Seventy-eight years old, negro, missionary Baptist preacher; lived in and around Wagoner since he went there in 1898; to, to four or five years ago; in 1901 or 1902 conducted the funeral of Nancy Atkins' boy; was asked to conduct the services by Monday Barnett; funeral was held in the house—don't know whose house—and he went to the cemetery and Monday Barnett, Bob DeLozier and E. G. White were there; thinks Bob DeLozier dug the grave; is undecided as to Nancy Atkins being at the burial. Witness is positive that this burial was in 1901 or 1902 but unable to fix the date by any other event.

On cross-examination says he did not know whose child was being buried—that "they said it was Nancy's boy"; knew Nancy Atkins but is uncertain about her being at the burial; Nancy never talked to her about the child being hers; Monday Barnett told him it was Nancy's child; didn't know who was in the box that they buried; only knew it was Nancy's child from what people told him.

ELLIS CHILDERS (Rec. p. 2637, recalled, 2649; recalled, 2685):

Fifty-one years of age; Creek citizen; three times speaker of the Creek House of Warriors; served a term as treasurer of the Creek Nation; also occupied the office of Creek National Attorney before the tribal courts; educated at Carlisle Indian School; knew both Minnie Atkins and Nancy Atkins; had known them for forty years and that they were members of Euchee Town; that Euchee Town was a political subdivision of the Creek Tribe; knew the father and mother of Minnie Atkins and Nancy Atkins; that Thomas Atkins was their father and that he was prominent in the Creek Nation, being captain of the Light Horsemen for a number of years; that Thomas Atkins, the father of Minnie Atkins and Nancy

Atkins, belonged to Coweta Town; that his wife, the mother of Minnie Atkins and Nancy Atkins, was a Euchee; that witness was at Carlisle Indian school from January, 1880, to June, 1884, and has since resided in what is now Wagoner County, Oklahoma. Gave it as his best judgment that Nancy Atkins was about fifty-one years old at the time of the trial and that Minnie Atkins was quite a good sized girl when he was at Carlisle school—a good deal larger girl than witness was a boy; that he is no blood relation to either Nancy Atkins or Minnie Atkins, but has known them intimately all his life; that he knew Nancy Atkins when she was living in Wagoner, but did not personally know of her giving birth to a child, although he did hear of it; that there was a pasture payment being made near Wagoner, October 8th, 1890; that he was there and that Saus Childers came to him and said that Nancy Atkins was very sick; that she had a baby in a tent and was going to die unless she was taken care of and that he wrote out a subscription paper asking for donations to help Nancy Atkins and that he headed this subscription list with $5.00 and that Saus Childers also gave $5.00 and that Saus Childers collected about $70.00 which was turned over to witness' mother and some other Indian women

to take care of Nancy; that the women came back and reported that they had gotten Nancy cleaned up and some fresh clothes and moved her into Betsey Birney's house and paid Betsey Birney to take care of her; that shortly thereafter he went to the Birney house to make settlement with Betsey Birney for some pasture land that witness was renting, and while there saw Nancy Atkins and her child; witness fixed this occurrence as not more than ten days after he contributed the $5.00 at the pasture payment; that on the occasion of his visit to the Birney house he talked with Nancy Atkins; that he saw Nancy Atkins about a year afterwards with the child—didn't ask whose child it was, but thought that it was hers—didn't pay much attention to the child at the time but afterwards learned that it was named Tommy Atkins; thought the child was about a year or a year and a half old the last time he saw it in Wagoner with Nancy; remembered seeing them both around the Davis and Jones' store; fixed the date of the pasture payment definitely as October, but was uncertain whether it was 1889 or 1890; saw Nancy Atkins before the pasture payment and noticed that she was in a pregnant condition; remembered Nancy being sent to the penitentiary after the birth of her child.

That he was a member of the Creek National Council in 1895 and was present at the session of the Council at Okmulgee in May of that year; that during that year there was approved by the council a roll of Creek citizens for the purpose of making a per capita distribution of $200,000 of the funds of the Creek Nation; that each of the several towns prepared its own roll; that these rolls were submitted to the Council and were referred to a committee for investigation; that on the report of this committee the Council acted and that the authenticated roll of 1895 was the roll of the several towns submitted by the town officers, favorably reported by the committee and approved by the Council; that there were forty-seven separate towns in the Creek Nation and there were forty-seven different rolls approved by the Council in May, 1895; that at the time the committee of the Council was considering the Euchee Town roll in May, 1895, he knew that Nancy Atkins had a boy child and that Minnie Atkins had two boys; that he did not then remember the names of the children of either Minnie Atkins or Nancy Atkins; that at the time he knew Ed Schrimpsher, a first cousin of Minnie and Nancy Atkins; also knew Kate Holden and John Davis;

that when the committee of the Council was considering the Euchee Town roll, Samuel W. Brown, Town King of Euchee Town, asked witness to come to the committee room to help him verify three families of Euchees that lived in witness' section of the Creek Nation; that these three families, concerning whom Brown made inquiry were those of Jim Childers, William Childers and the Atkins family. Witness was presented the book of Sam Brown (defendant's exhibit B-1), containing the original entries of the names of the Atkins family, purported to have been furnished Brown by John Davis, and identified Minnie Atkins as the principal defendant in this case, Charley Atkins as evidently intended for Charley Harrison, one of Minnie Atkins' children; that he did not know any person by the name of Susan Atkins, and being asked as to Thomas Atkins, replied: "Unless it was intended for this Thomas Atkins that we are talking about; that is the only one I know".

"Q. You are referring to Nancy Atkins, the--

A. Yes, sir.

* * * * * * * * *

"Q. Whom do you identify as Thomas Atkins?

A. Nancy's child" (Rec. p. 2650).

The witness was then presented the original of the Government's exhibit "A-2", being the 1895 payment roll of Euchee Town, and identified the same as the original receipt roll upon which the payment was made, at Okmulgee, in September, 1895; that he was present at the payment; that Sam Brown, Town King of Euchee Town, was also there; that Napoleon B. Moore, the National Treasurer of the Creek Nation was the paymaster; that Cornelius Carr was there in the capacity of a clerk and that Sam McCurtain was the official caller; and that witness, in company with Timmie Fife, was sitting at the paymasters' table when Minnie Atkins drew her money; that he personally saw her draw for the Atkins family, and that Mr. Moore objected to her drawing for the whole family and said that he didn't want to be responsible for paying it all to Minnie; that Minnie signed the roll, Moore paid the money to Brown and Brown turned the money over to Minnie. He identified the roll as being in the handwriting of Jim Lynch and the red ink notations as the handwriting of Mrs. Moore, the wife of the paymaster.

The witness was first cross-examined by R. C. Allen, National Attorney for the Creek Na-

tion, and was interrogated in reference to his activity in procuring the admission to citizenship of the Richard Atkins family and testified that he knew a Thomas Atkins, the son of Dick Atkins, around Wagoner. He was then confronted with and examined in reference to a sworn statement made by him on February 26th, 1916, before Fred S. Cook, Special United States Indian agent, wherein he stated, under oath, that when he went to Betsey Birney's after he heard that Nancy had a child, he saw Nancy in bed but did not see any child and that he never heard of her having any child except the one born at Wagoner at the time of the pasture payment in 1889 or 1890; that in this statement that he made to Cook, he was asked:

"Q. Did you ever know or hear of Nancy ever having any child or claiming any child by the name of Thomas Atkins?

A. I never heard of her having a child by that name or any other name; I knew she had one child, but my understanding was that they never had named the child. It never had a name until this matter came up."

And again,

"Q. How long did Nancy's child live?

A. I really don't know, but my understanding is that the child died very shortly after it was born" (Rec. p. 2671).

Witness admitted that the questions above quoted were asked him by Fred S. Cook and that he made the answers as read to him by Allen. That subsequently he went to Wagoner with A. G. McMillan, a Government agent, and pointed out to McMillan and introduced McMillan to the witnesses in Wagoner who were able to testify that Nancy's child was born dead.

On cross-examination by Judge Stuart, counsel for Minnie Folk and Page, he was interrogated as to his statement of February 26th, 1916, and answered as follows.

"Q. Ellis, you understood and believed that the child which Nancy is alleged to have had in 1890 died shortly after its birth?

A. I couldn't say whether it died right away, I don't know.

Q. Died very shortly after its birth?

A. No, sir.

Q. Didn't you say so in this statement?

A. I must have.

Q. Well, did you tell the truth when you said it?

A. I never did know when the child died. No, I couldn't say shortly or longly.

Q. Did you tell the truth when you made this statement?

A. I never did know when the child died.

Q. You answer my question; did you tell the truth when you made this or not?

A. Well, I did, of course, try to" (Rec. p. 2677).

On further cross-examination by Judge Stuart in reference to his testifying before the citizenship committee of the Creek Council in 1895, he testified as follows:

"Q. Now, as a matter of fact, when you went before that committee you knew that Sam Brown had made up this Euchee Town roll?

A. Yes, sir.

Q. You knew that Sam Brown was a Euchee King?

A. Yes, sir.

Q. You knew that you were not a member of the Euchee Town?

A. Yes, sir.

Q. You didn't know anything about the members of the Euchee Town except those in your vicinity?

A. Didn't pretend to.

Q. So, when you came in there and they put the matter to you, you simply said 'I don't know any Tommy Atkins', didn't you?

A. I don't think I said it.

Q. Didn't even say that much?

A. I don't know whether I said that much.

Q. Ellis, did you testify at all before that committee?

A. I just made a statement.

Q. What statement?

A. I asked what families they have got and they explained and I just simply said yes.

Q. That is all they asked?

A. Yes, sir.

Q. Now, you do know that the roll of Euchee Town, as prepared by Sam Brown, was adopted by the council, don't you?

A. I couldn't say that. I knew the Sam Brown roll as approved by the committee was adopted by the council.

Q. But you knew if the Sam Brown roll was endorsed by the committee then the Sam Brown roll was adopted by the council?

A. Why, certainly" (Rec. p. 2679).

He also testified on cross-examination that he had known J. B. White quite a while; that White had brought Nancy Atkins to his house and that she had remained there three weeks.

NANCY ATKINS (Rec. p. 2697; deposition deposition 2775-2785):

Forty-five years of age and born on Elk Creek in the Creek Nation and lived in the Creek Nation all her life; went to Wagoner to live but

is unable to fix the year, and got a job laundering at either the McAnally or Barnard hotel; was in a pregnant condition when she went to Wagoner and worked at the laundry until she was sick; before going to Wagoner had lived in Muskogee with her aunt Cherokee Robinson and the reason that she left her aunt's home was because she was in a family way and did not want to bring disgrace on the family. In the fall, after she went to Wagoner, she gave birth in the month of September, to a child; that the child was born at Elnora Williams' house and was a boy and that he lived until the spring of 1900 in and around Wagoner; that after the Brown hotel was built she went to work for Mrs. J. R. Brown and would often take her child to the Brown hotel; that she only had one child and that she often left this child with Betsey Birney; that she was present at the burial of the child and old man McHenry and E. J. White were there; that the child was born before she was arrested and taken to Fort Smith; that from Fort Smith she was sent to Detroit, Michigan, where she served a six and a half months and then came back to Wagoner and went to Williams' restaurant and that Mrs. Williams met her and they went to Betsey Birney's house where they

found the boy; witness admits that she is the plaintiff in the suit against H. U. Bartlett and the Gypsy Oil Company, pending in the state courts, and that she testified in the state court case at Sapulpa; that prior to her testimony on the stand in open court she gave her deposition in the office of McDougal and Lytle's office with Betty Mann and Edward Bartlett, the son of H. U. Bartlett; that Betty Mann and Bartlett had come to Coody's Bluff in February for the purpose of having her go to Sapulpa; that on the way to Sapulpa they stopped at Mrs. Albright's where they met Charley Rogers and that Rogers began questioning her about Minnie Atkins; that they got to Sapulpa about eight o'clock that night, which was Thursday, and she stayed there until Monday morning, when she went to McDougal and Lytle's office with the brother of Betty Mann; that at McDougal and Lytle's office she met Bartlett's son and Lytle questioned her and said that they wanted her child to be a girl and if she said the child was a boy she would get in the penitentiary; that this conversation only occupied a few minutes and she went out and that Betty Mann told her that they were to get $2,000.00 for proving that the child was a

girl and that if she said it was a boy that they had it framed for her to go to the penitentiary; that the same afternoon at two o'clock they went back to McDougal and Lytle's office; that H. U. Bartlett and his two sons were there; that Betty Mann was in an adjoining room; that Mr. Lytle was there and N. B. Maxey and Mr. Gresham, her attorneys' were present when she was examined; that she was asked why she answered the question at that time as to her child being a girl and replied, "Well, I was just taking them at their word; it was like this; I wouldn't rather have got anything that way than go to the penitentiary and I would rather do without it if I thought I was going to be put in the pen because I have been there once and I know what it is and I thought I would let them have it"; that the statement in Lytle's office at the time of the giving of her deposition was false; that it was made by reason of her intimidation; that she afterwards testified on the stand in open court at Sapulpa and contradicted what she had said in her deposition in McDougal and Lytle's office; that at the time she testified in open court she said her child was a boy and lived seven years; that the latter statement was true and that the statement made in the deposition in McDougal

and Lytle's office was false; that after her testimony in the state case Sadie James came to her at Nowata and wanted her to go with her to see her sister, Minnie Atkins; that witness told her she did not want to go with her but that Sadie James offered Joe Byrd $50.00 if he would persuade her to go with Sadie James and that Mrs. Byrd's sister was offered $25.00 to go as far as Kansas City with them; that Sadie James again talked to her about going to see her sister, Minnie, but she feared they were trying to kidnap her and that she went to Mrs. Yarboro's house and told her what Sadie James was attempting to do and asked Mrs. Yarboro to ring up J. B. White at Coweta and have him come and get her. That Mrs. Yarboro locked her up until White came Saturday evening and that Sunday morning she left with White and went to the home of Ellis Childers, where she stayed until December. While she is not positive, she thinks it was Friday, September 26th, that Sadie James came to see her at Nowata and that it was Sunday, the 28th, that she left with White. That prior to that time her guardian, Micco T. Harjo, tried to get her away and that they got as far as Coffeyville, Kansas; supposed to be on their way to Portland, Oregon, and while they were in Coffeyville

Henry McGraw (representing the Gypsy Oil Company) had her make a statement about her child; that this statement was made before she gave her deposition at Sapulpa in McDougal and Lytle's office; that while she and Micco Harjo were in Coffeyville, Bartlett also came there; that Harjo brought him to the house where they were stopping; that Harjo said to her that he could get $500.00 if she would do what he wanted her to do—that is, that Bartlett had offered him $500.00, if she would deny the child and that Harjo advised that they take the $500.00 and have nothing more to do with the suit and get out of the state; that Harjo afterwards brought Bartlett in to see her and Bartlett talked to her and she said, "Oh, well, it is immaterial to me; if you all can make it that way I will turn it over to you and I will get clear out of it because I haven't got enough money to spend on it"; that Bartlett then gave Harjo $10.00 expenses and that Harjo was to take her to Tulsa the next Monday. She later corrects this to make the town Claremore instead of Tulsa. That after Bartlett was gone McGraw came back and asked her questions which she answered; that she never received $500.00 or any part of it from Bartlett; does not know whether Harjo received it or not;

that after she gave her deposition at Sapulpa in McDougal and Lytle's office, she furnished Lytle with the name of Eliza Barnett or Eliza Sterling, as a witness at Wagoner by whom they could prove that her child was a girl; that she then, in company with Harvey Harrison, her nephew; H. U. Bartlett and Betty Mann, drove to Wagoner and first went to see Eliza Sterling; that she had not seen Eliza Sterling for a number of years; that Eliza Sterling recognized her; that she asked Eliza Sterling if her baby was a boy or a girl and that Eliza Sterling said, "Nancy, your child was a boy"; that Betty Mann then turned to Eliza Sterling and said, "You know it was a girl"; that witness then said to Eliza Sterling, "They want you to swear it was a girl, now remember that"; that they next went to see Angeline Moody and practically the same conversation took place and Angeline Moody stammered around for a while and then said, "I believe it was a boy", and that Betty Mann then ran in to her (Angeline Moody) and said it was a girl, and Angeline Moody then said, "Well, I believe it was". That H. U. Bartlett then gave Eliza $10.00 as expense money to come to the trial at Sapulpa and testify and the next morning Betty Mann came on the train with her to Claremore to see

that she got on the train for Nowata; that after getting these witnesses to the effect that her child was a girl, Bartlett and Betty Mann did not expect her to go to Sapulpa but that she did go to the trial and changed her testimony.

After this recital as to the Sapulpa procedure, she was asked:

"Q. Just tell the court what the truth is about this child.

A. Well, I will just tell the court.

The Court: Now, look at me and talk loud.

A. Judge, your Honor, I can't look at you, can't tell when I am looking at you on account of the cataract in my eye.

The Court: All right, look at me anyhow.

A. This child. Now, my child was a boy, sure enough.

The Court: Yes, now look at me.

A. I named it Tommy, but at the time I didn't know there was so many Tommys, so many boys in the Atkins family named Tommy I wouldn't never named him. I would much rather named him after my brother, but after Minnie had one named Lee, I just called mine Tommy, but the child really is a boy, honest. Of course, I ain't talking."

That the boy lived until the spring of 1900 and that he was about eight years of age or com-

ing nine at the time of his death; that Minnie Atkins' two children, Charley and Harvey Harrison, were with her in Wagoner for two or three months until Charley Bailey took one of them and Jim Childers the other; that Minnie brought the children with her from Colorado and left them at Kate Holden's and that she saw the boys at Kate Holden's before they were brought into Wagoner; that her boy was not at Kate Holden's at the time but that after she went to Nowata Tom Holden took her boy Tommy out to his place; that when she came back to Wagoner she went out to Holden's and Minnie's two boys and her Tommy were there; that she did not see Tom Way at the Holden's house, but met him on the way to Coweta; that she left her boy Tommy at Tom Holden's and that Kate Holden was to bring him to Wagoner and leave him at Betsey Birney's; that she did not see her boy again for a year, when she saw him in Wagoner at Betsey Birney's; she described the boy as being about her color and that his hair was black and straight, like that of the witness, and that he was small for his age.

Witness was first cross-examined by R. C. Allen, Creek National Attorney, and said that

Sadie James, representing Charlie Page, tried to kidnap her in September, 1914; this was the time she had the conversation with Sadie James at Mrs. Yarboro's house. Admits that she testified in her deposition at Sapulpa that the only child she ever had was a girl child born dead; that she so testified because Betty Mann said she would get $2,000.00. She was also asked about the $500 to be paid by Bartlett at Coffeyville and said she didn't know whether she was to get any of the money; said that Bartlett had himself never offered her a cent but that her information that the money was to be paid came through her guardian, Micco Harjo, and Betty Mann; that she had Micco T. Harjo appointed her guardian when she sold her homestead and after he had left the state she had Ridgeway, her present guardian, a negro, appointed. Admits that her lawyers, Maxey and Gresham, were present at McDougal and Lytle's office when she testified her child was a girl, born dead; that they cross-examined her at length and she stuck to her original assertion; that after she had made the deposition at McDougal and Lytle's office she was taken back to Sapulpa by Ellis Childers who said that Judge Stanfield had sent for her to come to the court house, that when she got to Sapulpa she talked

with J. B. White and afterwards went on the witness stand, in open court, and changed her testimony. Allen read from her testimony in the state case as follows:

"Q. Have you ever been married?

A. No, sir.

Q. Ever given birth to a child?

A. Yes, sir.

Q. What kind of a child was it?

By the Court: Boy or girl?

A. Supposed to be a boy, I guess."

Witness then details the sending of Charley and Harvey Harrison to her at Wagoner; that she was in Nowata when Ellis Childers came for her to go to Sapulpa to the trial; that Ellis told her they wanted her at Sapulpa; that she had told Bartlett the child was a girl and Ellis said, "You want to go and fix that because you might get into trouble" and she went with him to Sapulpa and went to the St. James hotel where she met J. B. White; that she had stuck to her story about her baby being a girl child; born dead, from July, 1913, until after February 9, 1914; that Angeline Moody hesitated quite a while before she could remember whether her baby was a boy or girl; that Betty Mann and

Bartlett and the witness, when they were in Wagoner, also tried to get Henry Kidd as a witness to go to Sapulpa but that Henry Kidd told them that he didn't know anything but that she did have a child; that Betty Mann then asked Kidd if it was a boy or a girl and Kidd said he didn't exactly know; that Betty Mann then said to Kidd that it was a girl child, born dead, and that Kidd agreed to go to Sapulpa and swear to that; she admits that she lived among negroes in and around Wagoner and that her child was born at Elnora Mayshack's (Elnora Williams'); that she knew Joe Birney and all Birney children, Charley, Dick and Coleetha, the youngest of the girls, and Joe, the youngest of the boys; that Joe Birney was about four years old to the best of her recollection when her baby was born; that at the time her child was born, Aunt Mandy, Mrs. Williams and old man Williams were in the house; Williams was running a restaurant down stairs; that she was in a room upstairs in bed; that Aunt Mandy is now dead and old Man Williams is dead, and that the only living person who was present at the birth of the child was Elnora Williams, now Elnora Mayshack, who resided in Portland, Oregon. Witness re-asserts that when she went to Kate Holden's that her

boy Tommy was there in addition to Minnie's boys' Harvey and Charley.

Cross-examined by Judge Stuart of counsel for Chas. Page, says she was first talked to in reference to the land in suit by her guardian, Micco Harjo; that Micco Harjo was appointed her guardian when she sold her homestead in 1912; that the homestead was sold through the Indian Agent; she had Harjo appointed guardian so that he could draw money for her; that the first time Harjo ever talked to her about this case he said he had seen the rolls at Muskogee and that Tommy Atkins was enrolled "and he first asked me did I have any children and I told him yes, I am the mother of a child" and he asked me what it was and I told him and he said "Did you ever get his allotment?" and I said I didn't know because uncle enrolled him and if he filed some of my kinfolks, filed him because I didn't file only for myself; that is what I told him; and he said, "Well, he is down there and it must be yours" and I said "well, you have got to prove it then if it is mine". Here the Court interrupted the witness with the interrogatory: "You said what?" Witness continuing: "I told him, well if it is mine you will have to prove it; I said I am the mother

of a child and his name was Tommy but whether he was enrolled or not I don't know because uncle enrolled us—was to enroll us— and I only filed for myself"; that she never told Robinson to file for her child but that she did file for her own allotment; that after this first conversation with Harjo he came again to her and said he had a chance to give a lease on the land but that Minnie Atkins was claiming it but that Harjo advised her that she could make as good a lease as Minnie and Ellis Hammett came to Nowata and gave her $50.00 for a lease that she executed; that Micco T. Harjo, her former guardian, was the first person who ever suggested to her that she might have any interest in the property in suit; that Micco T. Harjo is now in Portland, Oregon; that he left Oklahoma because he was scared of getting into trouble; that the next person talked to her about the land was Bartlett; and that Harjo brought Bartlett to her at Coffeyville and that Bartlett wanted witness to say that Tommy wasn't her child and that the child was a girl; that she was willing to go ahead with the "frameup" and that Mike told her that Bartlett would give him $500.00 but that he must be sure to take her (Nancy) out of Oklahoma and Kansas and get clean away; that it was witness'

understanding that they were to go to Portland, Oregon; that at the time she made the affidavit for McGraw, Micco T. Harjo and Mrs. Renfro and Mrs. Renfro's daughter were present and that she told McGraw that her child was a girl child, born dead; that McGraw asked her if she was telling the truth and she told him "yes"; witness said she didn't care much what she said at the time because she had made up her mind that she was coming back to Oklahoma; this was in Coffeyville in July, 1913. Admits that she stuck to the statement that her child was a girl child, born dead when cross-examined by Maxey at the time her deposition was taken at McDougal and Lytle's office in Sapulpa in February, 1914; that when Ellis Childers came to her at Nowata he said that the court wanted her at Sapulpa; that when she went on the stand she didn't know what lawyer had her put on the stand; that Judge Stanfield asked her whether her child was a boy or girl; that after she answered the question and told the court that her child was a boy and lived to be about ten years old Lytle got mad and walked up and down in front of her; that she never said a word to any of her lawyers about changing her testimony before she went on

the stand in Sapulpa. Admits that she was looking for a place to have her child when she went to Wagoner and knew Elnora Williams before she went there and her associates in Wagoner were all negroes; that Elnora Williams took care of her at the birth of her child; that Aunt Mandy was the mid-wife. When pinned down admits the only other persons who came to see her while she was confined were Mrs. Williams and Aunt Mandy; that Ellis Childers came to see her when the baby was about three weeks old and that the baby was in bed with her when Ellis came to see her; she specifically testifies as follows:

"Q. Now, listen, don't you know that that little child was born dead and it was taken out there and buried?

A. Oh, no, I ain't going to testify to no— I ain't going to brace those niggers' lies up that way.

Q. You think all those niggers have lied?

A. They have absolutely lied on me because they swore my liberty away from me twice right there in Wagoner. That is the reason I say I will not brace their lies up.

Q. What niggers?

A. Henry Anderson and all of them.

Q. Did Angeline Moody swear your liberty away?

A. I don't know whether Angeline was on the case.

Q. Did Elnora Williams?

A. No, she was for me.

Q. Did any other person besides Henry Anderson and some other niggers swear your liberty away?

A. All the niggers swore against me.

Q. Have you any reason to think why they should come here and swear a lie against you?

A. Well, I guess they have been offered money to swear a lie.

Q. You think they have been offered money by the Government?

A. I honestly and truly believe it."

On re-direct examination she said it was her understanding that her uncle William Robinson was going to look after the filing of her Tommy; that she filed on her own allotment June 6th, 1901, and that her boy was dead at that time, having died in the spring of 1900.

On cross-examination by Mr. Hanford, counsel for Minnie Folk, says she named her boy when he was two or three weeks old and that she learned that Minnie's boy was named Lee because Minnie had written her from Fort Logan, Colorado; that she kept Charley and Harvey Har-

rison at Lizzie Woodward's when they were in Wagoner and that she thinks the boys were there twelve months as near as she can get at it; that Charley Bailey took Charley Harrison away first and that Jim Childers afterward took Harvey; denies that she ever lived in a tent back of the Davis and Jones' store or that her baby was born in a tent; insists that her baby was born in Elnora Williams' house; denies that Bob DeLozier same to see her or ever brought her any meals; says that Elnora Williams brought her meals and looked after her when she gave birth to her child; denies that she ever lived at Betsey Birney's but admits going there frequently; said Betsey Birney kept her child while she was working at hotels and restaurants. On examination by the Court sticks to the story that her child was born at Elnora Williams' house and that she was in bed three weeks or a month before she was able to get up and around.

The Court asked the witness the following questions in reference to her having applied for an allotment for her dead brother Lee:

"Q. You asked about Brother Lee, did you?

A. Yes, sir.

Q. And they said he died before enrollment?

A. Been dead too long.

Q. Your boy died after enrollment, didn't he?

A. Yes, sir.

Q. And you knew he died after enrollment?

A. But brother died before enrollment.

Q. You asked about brother and they told you he died before enrollment and couldn't be enrolled?

A. Yes, sir.

Q. Did you say anything to them about your boy?

A. No, Uncle John was in there and I called on Uncle John to see if he could find out whether I could file for brother or not, and he was mad at me and wouldn't say anything in my favor."

MRS. BLANCHE YARBORO (Rec. p. 2744):

Resides at Nowata; relates incident of Sadie James and Nancy Atkins coming to her house in September, 1914; of the witness locking Nancy up over night; of her telephoning to J. B. White and of White coming to Nowata the next day and taking Nancy away with him.

J. B. WHITE (Rec. p. 2747):

Lives at Coweta, Oklahoma, and is one of the defendants in this action, being interested in

an oil and gas mining lease from Nancy Atkins; became acquainted with Nancy Atkins at Wagoner in 1895 when he was employed as a collector in the Davis and Jones' store, but knew her a couple of years prior thereto when he traded in Wagoner; saw her frequently after 1895; saw her with a boy around Wagoner after 1896; that Nancy told him it was her boy; that the boy appeared to be about five or six years old; that he continued to see the boy around Wagoner until about 1900; that he first became interested in the Tommy Atkins allotment in 1913 when the oil development was approaching that locality; that he had several inquiries from parties interested in securing a lease asking if he knew Tommy Atkins; that he made some inquiries; that he went to Nowata and had a conversation with Micco T. Harjo, the guardian of Nancy Atkins; that Harjo told him other parties had been to see him about a lease; that he saw Nancy on several occasions while at Nowata and talked with her freely in the presence of her guardian; that he was present at the time of the taking of Nancy's deposition in McDougal and Lytle's office at Sapulpa, February 9, 1914; that after she left Sapulpa he had no further conversation with her until

she returned to Sapulpa, three days before the trial on February 26th, 1914; that he sent Ellis Childers to Nowata to bring her to Sapulpa to have her present at the trial but that he had never attempted to influence Nancy Atkins or any witness in the case to testify except as to the facts.

On cross-examination witness admitted that he often saw Tommy Atkins, the son of Dick Atkins, around the Davis and Jones' store in Wagoner; that he was a mulatto boy; that when he first became interested in the Tommy Atkins property he procured a copy of the census card showing Minnie Atkins as the mother of Tommy Atkins and that he made inquiries with reference to Minnie Atkins and could not ascertain her whereabouts. He admitted that he put Nancy Atkins on the stand at the trial at Sapulpa in February, 1914, and that he kept her concealed in Sapulpa several days before she was put on the stand. At the conclusion of the witness' testimony (Rec. p. 1544), Nancy Atkins' testimony in full at the trial in the State Court at Sapulpa, February 26th, 1914, and her deposition given at McDougal and Lytle's office February 9, 1914, were introduced in evidence.

J. K. McCLAREN (Rec. p. 4406):

Resided in Wagoner from 1885 to 1891 and was acquainted with Nancy Atkins from about 1887 until he left there in 1891; that in the winter time he worked in the Davis and Jones' store and in the summer on a ranch; that the last two years he was in Wagoner Nancy Atkins lived in a tent back of the Davis and Jones' store and also stayed with some negroes named Birney and Williams and that a part of the time Nancy was employed as a laundress and dishwasher at the Barnard hotel; that about 1890 or 1891 Nancy had a child with her which witness was unable to identify as a boy or a girl, about one year of age; that he often saw the child with her around the Birney children. On cross-examination witness testified that he was born in 1874 and was about seventeen years old in 1891; that he never saw Nancy in a family way and never personally knew of her giving birth to any child.

J. H. ANDERSON (Rec. p. 4414):

Fifty-five years of age and lived six miles east of Wagoner; lived in the neighborhood of Wagoner since 1883; knew Nancy Atkins when he was living in Wagoner about 1890; on one occasion saw her leading a child that she said was

hers; that the child appeared to witness to be about three or four months old at the time; remembered the circumstance of Nancy going to the penitentiary and that Betsey Birney took care of the child while Nancy was away; that after she returned saw Nancy and the child around Wagoner; that the child appeared to him to be mixed a little with white, Indian and colored blood; that he never heard the name of Nancy's child—never paid enough attention to it to inquire its name. On cross-examination testified that the only Tommy Atkins he ever knew in and around Wagoner was a son of Dick Atkins, an Indian who lived near Coweta who was a son of Billy Atkins, and an Indian living near Tahlequah whose father's name was Sam Atkins.

M. J. PHILLIPI (Rec. p. 4419):

Fifty-four years of age; white man; went to Wagoner October 1st, 1892; established the Wagoner Record; knew Nancy Atkins and saw her around town with a child who looked to be three or four years old; the child was a rather dark, peculiar looking child with stringy hair; last time witness remembered seeing the child was in 1894 or 1895 when it was about four years old. On cross-examination witness testified that he did

not know whose child it was—had seen it with Nancy Atkins—seen it playing with the Birney children.

LIZZIE M. MILLER (Rec. p. 4422):

Fifty-two years of age; first became acquainted with Nancy at Wagoner in 1897 or 1898; that at that time she was living at Betsey Birney's; that Nancy had a child with her there that she claimed to be hers; that Nancy called the child Tommy; that he was a scrubby looking boy, kind of mixture of Indian and mulatto and was about seven or eight years old last time witness saw him just before he died in 1890. On cross-examination admitted that she only assumed the child was Nancy's. Asked as to whether Nancy ever had any other child with her, witness replied: "Well, I don't remember any of them but Tommy. He used to come down with Betsey's boys to bring the kindling".

J. W. RUBLE (Rec. p. 4427):

Forty-two years of age; sheriff of Wagoner County; came to Wagoner in December, 1896; knew Charley Harrison when he was living with Charley Bailey near Wagoner; also knew Harvey Harrison, his brother; knew Cheney Trent and the members of the Dick Atkins family; knew

Nancy Atkins and became acquainted with her in 1896 or 1897; did not remember of seeing her after 1897 when he thought she left Wagoner; saw her around Wagoner with a boy about five or six years old—supposed the boy to be Nancy Atkins' boy; that the boy was a sandy haired, freckled faced, dirty child who played mostly with negroes: never heard its name. On cross-examination witness testified that he came to Wagoner from Harrison, Arkansas; never heard of any of the Atkins family prior to that time and that his acquaintance with Nancy could not have extended over a year.

SID JOHNSON (Rec. p. 4430):

Forty-five years of age; special agent of the M. & G. O. railroad and a peace officer for twenty-five years; special officer for twenty-five years; special officer in the employ of the M. K. & T. in 1894; testified that he knew Lee Atkins who lived at Checotah, Indian Territory, and that he was killed by Amos McIntosh in November, 1894.

AUGUSTUS A. DAVIS (Rec. p. 4593):

Resided at Wagoner since 1893; testified as to Charley Harrison being at Charley Bailey's house in 1895 and 1896; knew Nancy Atkins; saw

her at one time with a boy come into his shoe shop and that Nancy told witness that it was her boy; that at a later date the boy was playing around his shop with some negro children and picked up something on the counter and one of the negro boys said "You had better let that alone", and called him Tommy and witness asked him "Tommy how much" and the boy replied "Tommy Atkins" and that the boy he saw with Nancy Atkins and around his shop was not Charley Harrison.

The Evidence Against Nancy Atkins.

ELNORA MAYSHACK (*Elnora Williams*) (Rec. p. 2163):

Resident of Portland, Oregon, forty-eight years old; at the time of the 1890 Creek payment was living at Wagoner; that Nancy Atkins had been living with her about six months prior to that payment at her home between the Davis and Jones' store and Kidd's blacksmith shop; that while Nancy was living with her she was sick and about to give birth to a child; that witness did not have a room at her house in which to take care of her and that a tent was rented for her located between the two railroad tracks, and that in this tent Nancy gave birth to a child; that it

was born in the morning and died in the afternoon of the same day. Witness was unable to fix the exact time of the birth of the child but testified that Nancy had received one Creek payment before the baby was born and another after it was born; that there were four persons present at the birth of the child; that she knew Nancy in and around Wagoner for about four years after the birth of the child and that Nancy lived with her and followed her around during that length of time; never knew of her having but one baby and never knew of any boy living with Nancy when she knew her.

In considering the testimony given by Elnora Mayshack, formerly Williams, as above abridged, who was in attendance upon Nancy at the time of the birth of her child in Wagoner, particular attention should be given to the following portions of the testimony of Nancy Atkins in which she herself states that she lived in the Williams home; that her baby was born at the Williams home and the Williams woman was there. Nancy testified (Rec. p. 2698):

"A. Now, I am not sure whether it was at the McAnally's or the Bernard, but I think it was the Bernard hotel the first place that I worked.

Q. Where was it (meaning the baby) born, where were you living at the time it was born?

A. Why, I wasn't just to say living; I was working at the Bernard hotel.

Q. Yes, I know, but whereabouts in the town was this child born, what house or place?

A. Elnora Williams' house."

(Rec. p. 2700) Nancy Atkins testified as follows:

"Q. How soon after that did you see— I will ask you first, did you see the child after you got back there?

A. After I went from the train I went to old man Williams' restaurant, and it had rained and the streets were muddy, and I made it over there and Mrs. Williams come to meet me half way. I got there and talked quite a while and said, 'Well, I will go on out to Betsey's'."

Nancy testified as to her return from Detroit, where she had served a term in the penitentiary. Elnora Williams testified that Nancy had come to her house after she was released from prison but that there was no child there that belonged to her. Under cross-examination by Mr. Allen, representing the Government and the Creek Nation (Rec. p. 2713), Nancy Atkins testified as follows:

"Q. Now, Nancy, did you mean to say that

that child that was born at Elnora Williams' was not born dead?

A. Why sure. I say my child was not born dead.

Q. If that Elnora Williams says that child was born dead or died the day it was born, she is mistaken?

A. Yes, she would be mistaken.

Q. You say it was born at Elnora Williams' place?

A. Yes."

Again at p. 2722 of the record, Nancy Atkins testified that she stayed at Elnora Williams' during her sickness and that the child was born there.

Again on page 2734, Nancy Atkins testified that when she was sick in childbirth Elnora Williams brought her meals to her and saw that her washing was done and took care of her. Again on p. 2741, in response to inquiries by Judge Campbell, Nancy Atkins testified:

"By the Court: Let me see if I understand you, Nancy, when I am asking you these questions I just want the truth, I am not trying to worry you at all. I understand then that you had your baby at this Mrs. Williams' house in one of those rooms?

A. Yes, sir.

By the Court: And that you stayed there

with your baby, until you got well and got up and able to go to work again?

A. Yes, until I was able to go to work again.

Q. Well, tell the Court about how long that was.

A. Well, I was down about, say, three weeks, then I got up—about a month before I got stirring around.

Q. During all that time you were at Mrs. Williams' house?

A. Yes, right where I was confined at."

MICCO HARJO (Rec. p. 2168):

Resident of Portland, Oregon; lived at Nowata, Oklahoma, prior to removing to Oregon; in 1912 Nancy Atkins was living at his house near Nowata and he was instrumental, in that year, in having her adjudged an incompetent and was appointed her guardian by the County Court of Nowata County; that he was first approached by Claude Weldon, of Wagoner, who was desirous of securing a lease from witness as Nancy's guardian, on the Thomas Atkins allotment; that after the conversation with Welden he talked with Nancy and she first told him that her child was a girl and afterwards said it was a boy; that subsequently Ellis Hammett and Ellis Childers talked to him about securing a lease and that Nancy did execute an oil and gas lease to Ellis

Hammett; and after the execution of the lease to Hammett, J. B. White came to witness and advised him the Hammett lease was no good and that he (White) wanted a lease from witness as Nancy's guardian; that White said in his conversation:

"Now, you can make this lease and I will bear all expenses and I can absolutely prove it was Nancy's child; I want to go down and talk to Nancy again. Can't I talk to her?"

That White then had a conversation with Nancy. Witness testified that after the execution of these leases:

"I talked to her (Nancy) and you know she was a habitual drunkard. She got drunk one day and she cussed me out about it and she told me the child was a girl and she wouldn't have anything to do with it, and then she turned around and told me it was a boy."

The witness specifically testified as follows:

"Q. When you first talked to Nancy Atkins about this child, when she told you it was a girl, did she say anything in reference to how long the child lived?

A. Yes, sir.

Q. What did she say?

A. She told me the child was born dead.

Q. Did she tell you where it was born?

A. Yes, sir.

Q. Where?

A. At Wagoner in a tent.

Q. Where, how is that? Where with reference to what place in the city?

A. Well, she said across the railroad there in some tent.

Q. Where did she say it was buried?

A. Well, she said Monday Barney (Barnett) buried the child out there some place.

Q. Did she ever undertake to tell you—did she ever tell you at any subsequent time anything about the time of the death of the child?

A. Yes, about the time of the death of the child, she couldn't remember, she said how long it had been only by the railroad coming to Wagoner.

Q. I mean this, did she always tell you that the child died in infancy?

A. Yes, sir.

Q. When did she say it died, did she say?

A. Well, she told me it was about the time that the railroad was coming to Wagoner, or something like that."

On cross-examination by Mr. Hanford, counsel for Minnie Folk, witness testified that Nancy told him that if she could find one Elnora Williams who was with her at the birth of her child, that she (Elnora Williams) would know all of the

facts (witness identified Elnora Mayshack, whose deposition is given above, as Elnora Williams).

ELIZA STERLING (Rec. p. 2179):

Forty-five years of age; lived in Wagoner for twenty-nine years; came there when the Iron Mountain railroad was building to Coffeyville; daughter of Mandy Barnett, who is dead; knew Nancy Atkins before she moved to Wagoner when she lived near Clarksville, between the Arkansas and Verdigris rivers; was present at Elnora Williams' house in Wagoner when Nancy gave birth to a child; witness had been in Wagoner about a year at that time; the child was a girl, born dead; Elnora Williams' house was west of the railroad tracks some little distance from the crossing of the Katy and Iron Mountain railroads, near the Davis and Jones' store; Elnora Williams' house was a story and a half house and Nancy's baby was born upstairs; knew of her going to the penitentiary; Nancy stayed with witness part of the time she stayed in Wagoner; witness' house was south of Elnora Williams', some five or six blocks; Nancy also worked at the Barnard hotel and stayed in the servants' room back of the hotel; that she associated almost entirely with negroes; on cross-examination,

testified she was eighteen or nineteen years old when Nancy's baby was born and gives the names of Betsey Birney, Maudie Vann, Patsy Overton, Henry Anderson and Grant Tucker as negroes, who were living in Wagoner at the same time; witness also testified in the State Court case at Sapulpa. On direct examination she stated that the child was born in the fall of 1889, but when confronted with her testimony at Sapulpa, corrected the year to 1890. On re-direct examination, did not know any boy in Wagoner called Thomas Atkins; knew Minnie Atkins' children, Charley and Harvey Harrison; Nancy kept these two children for a while in Wagoner; that Betsey Birney had a boy named Joe; he was about three or four years old when Nancy was sent to the penitentiary and he was often with Nancy; judged Nancy to be about her age when the child was born. Witness knows nothing of the burial of the child. (Nancy Atkins was in the court room during the examination of the witness and was identified as the Nancy Atkins who had the baby at Elnora Williams' house).

ANGELINE MOODY (Rec. p. 2190):

Seventy-two years of age; lived in Wagoner for twenty years; was living there when the Iron

Mountain railroad was building; knew both Nancy and Minnie Atkins; knew their parents Thomas Atkins and Mary Jane Atkins; has known Nancy Atkins all of her life; was present at Elnora Williams' house when Nancy Atkins gave birth to a child; that this was before Nancy went to the penitentiary; that the day the child was born witness was passing Elnora Williams' house and Elnora Williams told her Nancy was sick; that she started in the house and Mandy Barnett met her at the door and told her to come in and help her; that Mandy Barnett acted as mid-wife at the birth of the child and that the child was born dead and was buried in the yard of Elnora Williams' house; that she saw Nancy frequently after she came back from the penitentiary until she moved to Nowata; never knew of her being in a family way except the time she gave birth to the child at Elnora Williams'; that the child was a girl child. On cross-examination details occasion of Betty Mann coming to her to testify at the State trial at Sapulpa.

HENRY ANDERSON (Rec. p. 2196):

Born in 1848; went to Wagoner to live about twenty-eight years ago; was a "straw boss" with a gang of laborers working on the construc-

tion of the Iron Mountain railroad; got acquainted with Nancy Atkins when he first went to Wagoner; that Nancy was in a family way when he first met her: that one of his helpers, Ellis Harris, had laid off one morning and was staying at Betsey Birney's; that witness went to look for Harris and found him digging a hole back of the closet near Elnora Williams' house; witness asked what he was doing and Harris replied that Nancy had a baby that night and that he was digging a whole and was going to put in down there. That there was a little box on the ground; that the top was not nailed on and that witness took of the top and looked in the box and there was a newborn dead baby in the box; that witness lived in a tent north of Williams' eating house near the Birney place and would see Nancy half a dozen times a day around that neighborhood before she gave birth to the child. That she was in a pronounced family way; saw her frequently after Ellis Harris buried the box in Elnora William's yard; never saw her in a family way after that; continued to see her for five or six years; knew of her being sent to the penitentiary and was a witness against her in that case; never knew a boy named Tommy Atkins who lived in Wagoner; knew a Tommy Atkins, the son of Dick Atkins,

who lived about ten miles northwest of Wagoner; that this Tommy Atkins, as far as he knew, was no relation to Nancy Atkins. On cross-examination, thought Nancy's child was born in the spring; only saw Nancy for a few months before the child was born; never saw Nancy in anybody's house, but saw her in a tent and understood she stayed in a tent. Did not see anybody helping Harris dig the hole; when he talked to Harris about digging the hole, it was about half past seven in the morning; that the Thomas Atkins he knew northwest of Wagoner was a brother to Cheney Trent. (Nancy Atkins was in the court room during the examination of this witness and was identified by him as the Nancy Atkins he knew in Wagoner).

Dora Smith (Rec. p. 2208):

Lived in Wagoner 18 or 19 years and thinks she first went there in 1894 or 1895; knew Nancy Atkins before she went to Wagoner; knew her around Muskogee; visited with her and talked with her a great deal when they both lived in Wagoner; knew of her having two little boys with her that she stated were her sister Minnie's children; thinks one of them was called Lee; that Nancy told her she had been the mother of one child and that it was born dead; never saw any

other children that Nancy kept in Wagoner with her with the exception of the two boys she said were Minnie's children. On cross-examination testified that Nancy Atkins left Wagoner before she did and thinks she went to Nowata.

Patsy Miller (*Patsy Overton*) (Rec. p. 2211):

Lived in Wagoner about twenty-eight or twenty-nine years and moved there December 29th, 1887; fixes the date by her marriage to Overton, which occurred December 28th, 1887, and went to Wagoner the next day with her husband; knew Nancy Atkins a few years before her marriage when she was living in the bottom between the Verdigris and Arkansas rivers; Nancy Atkins was not living in Wagoner when witness first moved there, but came there later; knew Mandy Barnett and that she is dead; that Mandy Barnett was a mid-wife; knew Elnora Williams and lived with her on the west side of the railroad track; knew Betsey Birney; that when Nancy Atkins first came to Wagoner she was in a pronounced family way; that Mandy Barnett told the witness one morning that Nancy Atkins was very sick the night before and that she was afraid she was going to have bad luck with her as Nancy had had a baby that had died; that it

was her understanding it was a boy baby; that Mandy Barnett told her that they had buried the baby; that she knew of Nancy Atkins going to the penitentiary after she had the baby; after coming back from the penitentiary she stayed around Wagoner for six or seven years; that she never knew of her being in a family way but the one time; that she would see her two or three times a week; knew her when she was working at the Barnard hotel; saw two children with her and asked who they were and Nancy told her that they were her sister's boys and that her sister's name was Minnie; never saw her with any other boys. On cross-examination, stated she had been in Wagoner perhaps two or three years before Nancy moved there; that she was not present at the birth of Nancy's child; that she saw Nancy in a family way around Wagoner for two or three months before she had the conversation with Mandy Barnett; witness did not associate much with the Birney and Elnora Williams people as they were rough characters and her husband objected to her associating with them.

HENRY KIDD (Rec. p. 2220):

Sixty-six years of age; lived in Wagoner twenty-two or twenty-three years; thinks he

moved there in the fall of 1892; knows Nancy Atkins; did not know her when she went to the penitentiary; that Nancy Atkins and Betty Mann came to witness on the streets of Wagoner a few years ago and Nancy in the presence of witness told Betty Mann that she never had but one child and her child was born dead; knew a Thomas Atkins around Wagoner, who was the son of Dick Atkins; often saw him hauling wood; that Thomas Atkins hauled wood to witness' place; that this Thomas Atkins was a brother of Cheney Trent; that he died when he was twelve or thirteen years old. On cross-examination, stated Nancy had been to the penitentiary and had come back the year before he moved to Wagoner and that when he first knew her she was staying at old man Williams'; that witness boarded with Williams; not certain whether Nancy lived with Williams or in a tent; saw her around Williams' place.

LULA SMITH (Rec. p. 2223):

Thirty-eight years of age; went to Wagoner in 1891; knew Nancy Atkins; first knew her when she went to Wagoner; witness worked at Barnard hotel about four years and waited on table at Barnard hotel and Nancy Atkins often talked

to her; said that she had one child; that it was born dead or died soon afterwards; witness did not associate with Nancy; just saw her around the hotel and after witness left the Barnard hotel she worked at the railroad eating house and would frequently see Nancy; saw her every day or two; never saw her nor knew of her being in a family way; never heard of a boy around Wagoner named Thomas Atkins. On cross-examination, stated that she was about thirteen years of age when she went to Wagoner and that Nancy Atkins was older than witness; that witness waited on table and Nancy Atkins worked in the laundry; does not know what year it was Nancy left Wagoner; that Nancy volunteered the information about her having the baby; that Nancy told her about getting into trouble and being sent to the penitentiary.

MARTHA HARDRIDGE (Rec. p. 2233):

Forty-four years of age; lived in Wagoner since 1891; knew Nancy Atkins; first knew her at the Barnard hotel; roomed with her when they worked together at the hotel for eleven months; that Nancy had told her she had given birth to one child that was born dead; knew the Birneys and Joe Birney; often saw Joe Birney

with Nancy Atkins and that Joe would come to the hotel with Nancy Atkins; never knew any person by the name of Thomas Atkins. On cross-examination, described Joe Birney as a brown-skinned, little boy, but not a baby, in 1891.

PATSY JENKINS (Rec. p. 2235):

Lived north of Wagoner; never did live in the town of Wagoner; first saw Nancy Atkins in Wagoner when there was only one store there; about twenty-one years ago Nancy came to her house in the winter time and stayed with some renters a while and later stayed with witness; that she brought two children to witness' house, the oldest one was a boy named Charley and the youngest one a boy named Harvey; doesn't know where she got the boys; never saw Nancy with any boys except the two she brought to her house; Nancy told her she had been the mother of one child and that it was a girl child and born dead; that this conversation took place when Nancy was staying at witness' home; never saw much of Nancy after that. On cross-examination, stated that she was not well acquainted with Nancy Atkins and only knew her when she would see her. That it was a long time after she first saw Nancy that she came to her house and brought the two

boys; that Nancy told her that the boys belonged to her sister Minnie; that both boys were old enough to walk around; that the oldest one looked to be about six years old, that witness' house is in the Cherokee Nation about thirteen miles north of Wagoner.

SARAH COATS (Rec. p. 2241):

Became acquainted with Nancy Atkins in 1891; when she was working at the Barnard hotel in Wagoner; witness was working at the McAnally hotel at the same time; that there was just a fence between the two hotels; saw Nancy Atkins every day and often talked with her; witness lived in Wagoner until 1895 or 1896; knew Nancy Atkins before she went to the penitentiary; saw her frequently until witness left Wagoner in 1896; that Nancy's associates were negroes; never knew a Thomas Atkins.

CHENEY TRENT (Rec. p. 4179):

Lives west of Wagoner in Wagoner County; a citizen of the Creek Nation; daughter of Dick Atkins; claims to be a granddaughter of old Thomas Atkins; John R. Thomas represented her in her application for enrollment; that she had a half brother named Thomas Atkins who died when he was thirteen years of age, the year

the filing commenced; that he lived with her father; that she saw her brother, Thomas Atkins, at her father's until he died; that she often saw her brother, Thomas Atkins, in and around Wagoner with Nancy; that her brother made frequent trips to Wagoner. On cross-examination testified that her father and Nancy often drank together and that Nancy came to her father's house to get whiskey and that on these occasions Thomas Atkins was with them; that Nancy lived at a hotel part of the time she was in Wagoner; knew Betsey Birney; saw Nancy in Wagoner with her brother frequently.

ANDERSON CHILDERS (Rec. p. 4291):

Citizen of the Creek Nation; has lived in and around Wagoner for twenty-five years; knows Minnie Atkins and Nancy Atkins; that Nancy Atkins moved to Wagoner about 1891 or 1892; saw her on an average of once a week after she moved there; knew Dick Atkins and his son, Thomas Atkins; that Dick Atkins and Sallie Atkins were the mother and father of this Thomas; that Thomas Atkins died in 1898; that he frequently saw Thomas Atkins, the son of Dick and Sallie Atkins, in and around Wagoner with Nancy Atkins; that they were around the Davis and Jones' store;

that at the time Thomas Atkins was about seven or eight years old; that he frequently saw Nancy in and around Wagoner with Minnie Atkins' two children.

At the conclusion of the testimony of this witness the Government offered exhibits "A-113" and "A-114", the testimony of Sallie Atkins, the mother of Thomas Atkins, in reference to the application to the Dawes Commission for the enrollment of Thomas Atkins, and certified copy of departmental letter of December 8, 1905, relating to the enrollment of the Dick Atkins family.

T. Howard Morton (Rec. p. 4298):

Went to Wagoner in 1891 and was employed by the Davis and Jones' Mercantile Company and continued in the employ of Davis and Jones until 1902 or 1903; became acquainted with Nancy Atkins when he first went to Wagoner; never knew of her having a boy named Thomas Atkins; did know a Thomas Atkins, a son of Richard Atkins and a half-brother of Cheney Trent, who lived about ten miles northwest of Wagoner and frequently saw him about the Davis and Jones' store; that Thomas Atkins often hauled wood to witness' house.

JIM CHILDERS (Rec. p. 4300):

Forty-three years old; left Wagoner in 1912; was raised in and around there; brother of Ellis Childers; knew the Dick Atkins family; knew Nancy Atkins first in 1890; knew Nancy Atkins about the time she was in the family way; knew Betsey Birney, Elnora Williams and Mandy Barnett; all of these people moved into Wagoner about the time the Iron Mountain railroad was built; at the time he knew Nancy Atkins to be in a family way she was living with the Birneys'; that this condition disappeared and that he saw her after that every two or three months up until along in 1894; that he talked with Nancy frequently; that during this time Thomas Atkins, the son of Dick Atkins, was around Wagoner with Nancy; that Thomas Atkins often stayed with her; that he was four or five years old; that this was the only Thomas Atkins he ever knew in Wagoner; knew the Birney children and Minnie Atkins' two boys who frequently stayed with Nancy; that witness kept Harvey Harrison at his home for a long time; that Charley Bailey took Lee Harrison to raise; that at the time witness got Harvey from Nancy, she was living at Eliza Barnett's; that at this time Harvey was

four or five years old; that witness kept him until 1898 and then turned him over to Kate Holden; that the Birney children played around with Nancy.

ANANIAS ATKINS (Rec. p. 4938):

Colored; son of Dick Atkins and a brother of Thomas Atkins, son of Dick Atkins, testified that he and Thomas Atkins were born in Missouri and that he was some older than Thomas; that Thomas died in the fall of 1898 at their home ten miles northwest of Wagoner; that his brother Thomas frequently went to Wagoner and would be around the Davis and Jones' store; that Thomas Atkins worked around Wagoner and hauled wood to and from his father's farm; that when Thomas died he was thirteen years, three months and some days old; that his father always told him Nancy Atkins was his aunt. On cross-examination witness testified that his brother Thomas would stay two or three days at a time in Wagoner.

MARY WILSON (Rec. p. 4401):

Colored; daughter of Dick Atkins; testified that she had a brother named Thomas, born in Missouri, and that he come to the Indian Territory with the family; that Thomas hauled wood between Wagoner and her father's farm; that he died

when he was about thirteen years old; that he died in 1898.

CHARLES HARRISON (Rec. p. 4528):

Son of Minnie Atkins and brother of Harvey Harrison; twenty-seven years of age; testified that his mother brought him and Harvey to the Indian Territory and gave them to his aunt, Kate Holden, who lived on the Arkansas river across from Choska, near where the town of Haskell is now located; that he stayed there one summer and one winter and was then taken by his aunt Nancy to Wagoner; that at the time he and Harvey stayed with his Aunt Kate there were no other boys there and there never was a boy there by the name of Thomas Atkins; that he knew Tom Way, a cattle man, who frequently came to his aunt Kate's; that he often opened the gates for Way and Way sometimes gave him a quarter; that he did not remember having a brother named Thomas; that when his aunt took care of him and Harvey there were no other boys with her; that at the time he and his brother lived with Nancy she was staying with some negroes in Wagoner; that he went over to the Davis and Jones' store with her; that he never knew of his aunt Nancy having a boy of her own.

Analysis of the Nancy Testimony, Pro and Con.

We have endeavored to make a concise resume of all the testimony in this case in favor of Nancy Atkins and against Nancy Atkins, both in chief and in rebuttal. Now when we begin to consider this testimony and what it establishes we must keep in mind, of course, the burden which Nancy assumed in this regard. What must be the probative force of her evidence under the adjudication? Justice Van Devanter in the case of Ross v. *Stewart* (277 U. S. 530, 57 L. ed. 629), in speaking of this matter, said:

> "All reasonable presumptions must be indulged in support of the action of the officers to whom law entrusted the proceedings *resulting in the patent, and unless it clearly appears that they committed some material error of law, or that misrepresentation and fraud were practiced upon them, or that they themselves were chargeable with fraululent practices, and that, as a result, the patent was issued to the defendant when it should have been issued to the plaintiff, their action must stand.*"
>
> And cases cited.

Here is a patent issued by the United States Government and that patent was the result of certain action on the part of the Dawes Commission, which was approved by the Secretary of the Interior. This action of the Dawes Commis-

sion is sought to be impeached for mistake, although, as shown above, Nancy Atkins' pleadings do not justisfy any such attack. Inasmuch as this judgment of the Dawes Commission, as far as Nancy Atkins is concerned, is being attacked for mistake, it is an effort to set aside the proceedings which resulted in the patent to the extent that those proceedings were erroneous in that a mistake was made against Nancy Atkins as mother of the Tommy actually enrolled.

How can it be said, in the face of the testimony we have just quoted both for and against the Nancy Atkins claim, that it clearly appears from such evidence that Nancy Atkins ever had a boy by the name of Thomas Atkins? The most singular and impressive incident in Nancy's case is that when she was asserting her right to an allotment she made written application to the Dawes Commission to have her sister Minnie Atkins enrolled. It is conceded that at the very time she applied for enrollment and allotment for her absent sister, if her testimony is to be believed, that she had by her side this alleged infant boy of hers, Thomas Atkins. Nancy Atkins knew that she was entitled to an allotment; she thought Minnie was, although she was not sure whether

Minnie was alive or dead, and until informed to the contrary by the Dawes Commission, she thought her brother Lee was. She knew these things, she knew that her alleged child, Thomas, if he was living at that time, as claimed by her, was certainly entitled to an allotment. How can her silence as a mother be explained in this case? How can the Court escape the force of this undisputed fact in this case?

It further appears from the evidence above cited and briefed, that Nancy Atkins went to Wagoner about 1889 or 1890, and that she there soon afterwards gave birth to a child. As has been said before in this brief, she made her home with the colored people and it appears that she lived for months and months with Elnora Williams. Nancy Atkins in her testimony declares that she had this baby at Elnora Williams' (now Elnora Mayshack) house. The testimony of Elnora Mayshack was taken by the Government in Portland, Oregon, and we now say at the outset of this branch of the argument that it is fair to assume, in the absence of proof, that the Government endeavored to get the truth out of these witnesses and that their statements were not influenced in any way by the defendants, Page or Minnie Folk.

Elnora Mayshack, a witness for the Government, strongly testified that she knew Nancy Atkins well, that Nancy Atkins had lived with her for a long time, that she came to her place to have this baby, that she was present when the baby was born, and that it died very soon afterwards.

Right in this connection we wish to state to the Court a significant fact as appearing in the testimony of Henry Anderson. It seems that Henry Anderson was a foreman or "straw boss" of a railroad gang and had a man working for him by the name of Ellis Harris. Ellis Harris did not show up for work on a certain morning and Henry Anderson went to see why he had not come to work. He found Ellis Harris behind Elnora Williams' house. He found him digging a hole in the ground and he found him with a little box. Ellis Harris when questioned said he had a baby in that box, that it was Nancy Atkins' baby and that he was going to bury it. Henry Anderson opened the box and looked at the dead infant. Now the testimony of Anderson is to a concrete fact about which he could not be mistaken unless he was a clean-cut perjurer. The Government summoned Henry Anderson as a witness in this case. It is not shown that he had any interest, that he had any antagonism toward Nancy Atkins, or

that there was any impelling motive upon him to tell other than the truth.

Now, all the witnesses swear that this child was practically born dead, that is, all the witnesses who are now living and who were present at the birth of the child, and when you supplement this with the testimony of Henry Anderson that he saw the dead child, saw it in a box and that it was being placed in a hole behind Elnora Williams' house and that the man who had the child said it was Nancy's dead child, there is no escape from the conclusion that Nancy's child was born dead, or practically dead.

It will be remembered also by the Court, and we are not going to discuss in detail every phase of this testimony, that when Nancy Atkins gave her statement or deposition at McDougal and Lytle's office in Sapulpa, February 9th, 1914, she stated that she had had but one child, that it was a girl child and born dead. She cited Attorney Lytle to Eliza Sterling as the only witness living in Wagoner who really knew all about the child and later on we will show to the Court that Ellis Childers did the same thing.

When Eliza Sterling was found, she was sum-

moned by the Government as a witness in this case, and this Eliza Sterling the woman who was named by Nancy Atkins as the one who could give the exact truth about her child testified that she was present at its birth and that the child was born dead. Why was it, if Nancy was not telling the truth when she gave her deposition in McDougal and Lytle's office, that she should refer them to a witness who would, and who actually did upon the stand, substantiate the statement that Nancy made in her deposition at that office?

Other witnesses, one after the other, who knew Nancy Atkins, testified that Nancy said this child was born dead, that Nancy never claimed that she had but one child, that she was never seen pregnant at Wagoner but once and that was in the year 1889 or 1890, and they all, with one accord, say that she never thereafter had any child and they all agree, either from what Nancy said or from what they saw, that this child was a girl child and was born dead. Their testimony is consistent with the statement which Nancy made to Mr. McGraw at Coffeyville, Kan., on July 26th, 1913, and their testimony is consistent with the testimony which Nancy gave in her deposition at Sapulpa, Okla.

Right here we beg the Court to notice why it was that Nancy changed her testimony when she got on the stand at Sapulpa, February 26, 1914. We now go to the deposition of Micco Harjo, who was Nancy's guardian, and whose testimony was taken by the Government at Portland, Oregon. Micco Harjo admitted that he had Nancy at his house when J. B. White came to see her in 1913. Harjo said he had talked with J. B. White and that after Nancy's talk with White she, for the first time stated to him that her child was a boy child and that it was the Thomas Atkins enrolled by the Dawes Commission. He testified that White said to him, "I can absolutely prove that the boy enrolled by the Dawes Commission was Nancy's child". Harjo says that some time after that Nancy got drunk and cursed him out and told him that the child was a girl and that she wouldn't have anything to do with it.

The Government called special attention to these matters, and Harjo said that the first time he ever talked with Nancy about her child she told him it was born dead and born in Wagoner. On cross-examination by Mr. Hanford, counsel for Minnie Folk, he stated that Nancy told him about Elnora Williams, who was present at the

time her baby was born and that Nancy told him and continued to tell him that if she could find Elnora Williams she could establish her claim that she, Elnora Williams, was with her when the child was born and knew the facts.

For some reason—which the Court will find, and we apprehend it is not very difficult to discover—Nancy changed her testimony when she got upon the stand at Sapulpa, and for the first time claimed that her child was a boy. Now this case is so full of contradictions by both Nancy and Minnie that we will not burden the Court by attempting to reconcile the contradictions in favor of either, but we do say that insofar as we have presented this matter to the Court in this brief, it is perfectly clear that Nancy cited those who made inquiries both to Elnora Williams and Eliza Sterling as the people who knew all about the circumstances of her baby's birth, and these witnesses, whenever and wherever found by the Government, have testified against Nancy and have disclosed positively and unequivocally that Nancy's statement that it was a boy child or that it lived for years after its birth is false.

Certain witnesses were introduced by Nancy Atkins, some of them reputable men and some of

them very disreputable. Some honest men got on the stand and swore that they had seen Nancy Atkins with a child time and again in Wagoner, and that she called it Tommy and that it was anywhere from eight or nine to eleven or twelve years of age when they saw it. We think that this matter has been clarified and made as plain as evidence can make a matter twenty-five years ago. It seems that there was a boy by the name of Thomas Atkins, who was the son of Richard Atkins, and that he lived near Wagoner. The witnesses stated that this boy hauled wood from his father's place northwest of Wagoner. Cheney Trent, an Indian woman, testified that this Thomas Atkins, of whom we have just spoken, was her half-brother, that he did frequently go to Wagoner and that Nancy Atkins was his aunt, or claimed to be his aunt, and that this brother of hers,—Thomas Atkins—was frequently with Nancy in Wagoner, that he frequently stayed with her and went about the streets with her; that Nancy would frequently come to her father's house and would go back with her folks to Wagoner. It is easy, therefore, to explain the confusion into which the case has fallen at this point and to reconcile the statements of the reputable witnesses produced by Nancy. Nancy did have a boy

with her by the name of Tommy Atkins. She was frequently with him. She claimed that he was her nephew, and if any boy was seen with her whose name was Thomas Atkins this, of necessity, was the boy, because when you take into consideration the fact that the witnesses who were actually with her when she was confined testified that her child was born dead, and when you compare this with the further fact that there was a Thomas Atkins frequently with her in Wagoner who was the son of Richard Atkins, you have at one and the same time broken down her claim that she had a son by the name of Thomas Atkins who lived to be twelve or thirteen years of age, and reconciled the statements of her reputable witnesses with the actual facts in this case. Is it not reasonable to conclude that this Thomas Atkins, the son of Richard Atkins, was the boy that Tom Way saw with Charley and Harvey Harrison at Tom Holden's?

Much stress is laid by learned counsel on the testimony of T. J. Way, but in opposition to this, among other things, we call particular attention to the testimony of Mitchell Wadsworth, who is a nephew of Minnie and Nancy Atkins and the son of Kate Holden, with whom Minnie Atkins

left her two children. Counsel for Nancy Atkins, in their brief, laid great stress on the assertion of T. J. Way, to the effect that he saw Nancy's son Thomas Atkins at the home of her aunt, Kate Holden. Mitchell Wadsworth was placed on the stand by the Government (Rec. p. 4599). He testified as follows:

"Q. During the '90's, up to 1902 or 1903, did you know who lived in the home of your mother, Kate Holden?

A. Why, up to 1898, Charley and Harvey was kept there from the time Minnie Atkins turned them over to my mother until 1898, and then they was taken away, but there wasn't but one Indian boy by the name of Edmund Bear that stayed there.

Q. Was there any Indian boy by the name of Tommy Atkins ever stayed there?

A. No, never was. I don't guess there ever was a Thomas Atkins stayed all night at that house.

Q. How long did Edmund Bear stay at your mother's home?

A. About six years."

Another mysterious thing in this case, and one which shows which way the wind blows, is Ellis Childers' connection with Nancy's case. The Court will remember Nancy Atkins testified that Ellis Childers came to Nowata after her in Feb-

ruary, 1914; that he came out in a buggy, went with her to get some clothes, and that Nancy thereafter appeared at Sapulpa and that Ellis was also at Sapulpa. Ellis Childers went on this errand and brought Nancy to Sapulpa at the instance of J. B. White, and strange to say she, for the first time, changed her testimony when she got to Sapulpa and this change was made after a conversation with Ellis. Can the Court have any doubt that Ellis Childers went there for the purpose of inducing this woman to swear in behalf of White, and can the Court doubt for a moment that Elllis Childers, by words and promises, induced this woman to change her testimony and swear a lie in the court at Sapulpa?

But Ellis Childers was afterwards employed by the United States Government. Ellis made a statement to the Government through R. C. Allen and Fred S. Cook, the Government's officers, and swore to it. In this statement Ellis made the positive assertion that he understood that Nancy had one child born about 1889 or 1890, and that his information was that the child was born dead. He further stated in the affidavit to these officers that he had never heard that Nancy had a boy and had never seen her with a boy by the name of Thomas Atkins.

The Government then induced Ellis to go with A. G. McMillan, a Government officer, to Wagoner and obtain the witnesses who tell the truth about this transaction. Ellis pointed out the witnesses, Eliza Sterling, Angeline Moody and others to this officer, and their statements were taken and in each and every instance these witnesses, pointed out by Ellis to McMillan, and some of whom were introduced to McMillan by Ellis, testified unequivocally that Nancy Atkins had one child in Wagoner and that it was born dead. Now what a sad condition of perjury we meet with here.

Ellis Childers actually induced Nancy Atkins to swear in court at Sapulpa that her child was a boy and lived to be eleven or twelve years of age, and yet afterwards, when he went into the employ of the Government, he pointed out witnesses to the Government's agent and assisted in procuring testimony in behalf of the Government, and these witnesses and the testimony procured by Ellis at the instance of the Government absolutely contradicted the testimony of Nancy Atkins in the court at Sapulpa. In the one case, at Sapulpa, inducements were held out to Nancy Atkins to change her statement made to Mr. McGraw at

Coffeyville and to change her statement in her deposition taken in McDougal and Lytle's office. In the other case no inducements whatever were held out to the witnesses summoned by the Government, but they stated, both in statements to the Government officers and upon the stand in this case, facts in direct conflict with Nancy Atkins' testimony at Sapulpa which Ellis Childers undoubtedly induced her to give. Is it necessary to discuss this evidence further? Is it necessary to urge before this Honorable Court that Nancy Atkins has not only signally failed to show that she had a child by the name of Thomas, but that she has failed to show that she had a child at all who was a boy child and who lived? It seems to us that Nancy has not only failed to show *clearly* that she had a child by the name of Thomas, but that she has failed, by any reputable evidence, to show that fact at all. We, therefore, with reference to the claim of Nancy Atkins, confidently assert that she has not introduced a line of testimony showing that the Dawes Commission ever actually enrolled Thomas Atkins as her son or actually intended so to enroll him. She has failed absolutely to establish any mistakes on the part of the Dawes Commission, although her pleadings did not justify her attempt, and she

has absolutely failed to show that the Dawes Commission, at any place or at any time, considered her relationship to the Thomas Atkins actually enrolled, or that the members of said Commission or any person connected with the Commission had in their minds at the time they made out the census card and pronounced judgment in favor of Thomas Atkins, any idea or suggestion from anybody that the child Thomas Atkins with whom they were dealing was in any way related to Nancy Atkins, and she has signally failed, in our judgment to establish that she had a son by the name of Thomas Atkins. She failed to convince the mind of the trial court in this last contention and, therefore, it comes to pass that she has failed to make out her claim.

That being true, we feel great hesitation in balancing the evidence between the claim of Minnie Atkins and Nancy Atkins as given in this case and attempting to find where a preponderance of the evidence lies and we should not do so and should not burden this Court with any statement of the evidence for and against Minnie Atkins were it not for the fact that the claim of Minnie Atkins being the mother of Thomas Atkins is attacked.

Some point is endeavored to be made with reference to the result of a certain case known as *Bartlett* v. *Atkins*, 169 Pac. 1076. We cannot understand how and in what way the decision in this case can have any bearing upon this cause. That suit was a controversy between Bartlett and Nancy Atkins. Minnie Atkins was not a party to it and was not in the country at the time. Page, the lessee of Minnie Atkins, was not a party to it and had no connection with, or relation to it any way. Of course the judgment in that case was not binding upon Minnie Atkins or upon Page, her lessee. The Supreme Court of Oklahoma was particular to say that the judgment which Nancy obtained against Bartlett in that case was binding as to the parties to that suit, and absolutely against no one else.

We have already demonstrated, we think, to the satisfaction of this Court, that the claim of Nancy Atkins is utterly untenable as against the claim of Minnie and her lessee. The Court below had the judgment in this case of *Bartlett* v. *Atkins* in evidence before it, had all the evidence from every source that could be garnered, and decided that Nancy's case was not made out, and found against her.

We, therefore, submit to this Honorable Court that a comparison of the evidence for Nancy and against Nancy shows a clear preponderance, to say the least of it, against her claim. We believe we are justified in stating, with all due respect to the Court, that the claim of Nancy Atkins is destroyed by her own conduct and her own testimony. Indeed the trial court seems to have had no difficulty whatever in reaching the conclusion that the claim of Nancy Atkins was fabricated, and this independent of the testimony in favor of Minnie.

We do not wish to consume further time in discussing the testimony in this record. We are content with the judgments of two courts upon this question of fact and we do not believe it possible for any trained mind to reach any other conclusion as to Nancy's claim than that reached by the United States District Court and by the Circuit Court of Appeals.

The Government has appealed in this case and is attacking the claim of Minnie Atkins to the allotment of Thomas Atkins on the ground that said Thomas Atkins named on the roll never existed. Of course, if the Tommy Atkins so

named never existed, he could have been the son neither of Minnie nor Nancy.

We assume that the Government will also answer the brief of counsel for Nancy and will thoroughly elaborate the weakness of our claim. The whole record is not available to us in writing this brief and we are compelled to refer to the pages of the record referred to in our brief before the Circuit Court of Appeals, assuming that the pages of the record will be the same in this Honorable Court. But with the apprehension that we may be tedious we recapitulate:

CONCLUSION.

We think there can be but one conclusion in this cause when measured by the adjudicated cases, and that is that the rolls of the Tribe, together with the evidence in support of said rolls, are practically conclusive of this controversy. What is known as the Thlocco case reported as *U. S.* v. *Bessie Wildcat*, was the first expression by the Supreme Court of the United States as to the binding force and character of the judgments of the Dawes Commission and of the force and effect of the rolls of the Tribe as evidence. It will be remembered that in that case the Court declared that the Dawes Commission was expect-

ed to make mistakes; that the immense volume of work before it induced mistakes, but that their judgments whether perfectly correct or not, must be assumed to be correct and impervious to collateral attack. The doctrine announced in the Thlocco case was not new because the Circuit Court of Appeals, 8th Circuit, more than twenty years ago announced and continued to announce prior to the decision by the Supreme Court in the Thlocco case that the Dawes Commission was a judicial body and that its judgments were entitled to the same faith and credit as judgments of any court of competent jurisdiction. The Thlocco case approved the original opinions of the 8th Circuit and held that the proceedings of the Dawes Commission were in no sense *ex parte.* The Courts declared that the presence of the Creek council when the Dawes Commission was enrolling, the presence of the attorney for the Creek people whose duty it was to watch the rolls and help purge them, made the whole transaction a judicial trial; made the judgment after such trial a muniment of title in favor of the party who was actually enrolled by the Commission.

Let us now consider what the Dawes Com-

mission had to do when it came to the name of Thomas Atkins on the roll. The Commission took the roll of 1890 and examined it; it took the roll of 1895 and examined it, and above all, took the corrected roll; that is, the exact roll known as the Creek payroll, and examined it. On these rolls, the Commission found the name of Thomas Atkins, and the Commission found that name accredited to the family of Minnie Atkins and found that Thomas Atkins accredited to Minnie as his mother. On the face of the rolls, the Thomas Atkins whom the Commission was examining was the son of Minnie Atkins; with these rolls before it and with the duty resting upon the Commission to determine if the rolls spoke the truth, the Commission took the evidence outside of the rolls and found that the Thomas Atkins on these rolls was, in fact, the son of Minnie Atkins. The Dawes Commission did this in order to assure itself that these rolls, as to this particular Thomas Atkins, spoke the truth, and the Commissioner found that the rolls did speak the truth because the evidence that the Commission took accorded in all things with the faces of the rolls. Now we contend that these rolls, if they showed on their faces that the Thomas Atkins on these rolls was the son of

Minnie Atkins, are at least presumptive evidence in favor of Minnie Atkins against the world, and they must be broken down by clear and substantial proof. To state the matter in another way, the first thing the Dawes Commission did when it came to this particular Thomas Atkins, was to examine the rolls of the tribe; that examination showed beyond a doubt, that the rolls of the tribe on their faces disclosed the particular Thomas Atkins which the Dawes Commission was considering, to be the son of Minnie Atkins. This being true, the Dawes Commission then followed up this examination of the rolls by taking evidence entraneous to the rolls and concluded that the rolls were correct and they denominated this particular Thomas Atkins as the son of Minnie. We say that these rolls therefore are, if not conclusive, presumptively correct and we start out, therefore, with this much in our favor.

As we have shown in the earlier part of this brief, no evidence was taken by the tribe or by the Dawes Commission as to Nancy being the mother of this particular Thomas. The Dawes Commission was seeking to find and identify the particular Thomas Atkins named on the rolls as the son of Minnie. It examined, it called witnesses,

it pursued every avenue open to it, and finally determined that the Thomas Atkins named on the rolls as the son of Minnie Atkins and who was actually being considered by them, was in fact the son of Minnie.

We therefore recur to the original question, who was the Thomas Atkins No. 7913 actually enrolled and intended to be enrolled by the Dawes Commission? The rolls on their faces declare that he was the son of Minnie Atkins. These rolls were prepared and approved by the Creek people, who, of course, had a deep and abiding interest in making correct rolls. The evidence taken by the Commission absolutely corresponded with the notations on the roll. This being true, how can it be contended that one Thomas Atkins, the alleged son of Nancy Atkins, was the one enrolled by the Dawes Commission? We confess that it is beyond our comprehension to imagine a case where a tribunal, having examined the right of a certain person to certain benefits under existing law and having rendered judgment with reference to that particular person whose rights they were examining, could have made a mistake against some other person who was not in contemplation and not considered when the tribunal

rendered its judgment. The Dawes Commission did exactly what it intended to do. It found Thomas Atkins on the rolls as the son of Minnie. It took evidence which sustained the roll and it therefore enrolled Thomas Atkins, the son of Minnie. Before we conclude here we desire to call attention of the Court to the specific findings of Judge Campbell, the trial judge, which can be found on pages 140, 149 and 150 of the record. The learned trial judge found that the Dawes Commission in acting in this particular case did not act arbitrarily and without evidence, but had before it substantial evidence as to the right of Thomas Atkins to enrollment and as to his being the son of Minnie Atkins. In this first finding, which we have just quoted substantially, the learned judge declared that not only did the Dawes Commission have a trial and hearing upon this matter, but had a trial and hearing as to the identity of the particular Thomas Atkins under consideration and had evidence as to his being the son of Minnie. In the next finding the trial judge found that the Thomas Atkins enrolled as No. 7913 on the final roll of the Creek Indians was the son of the defendant, Minnie Folk, *nee* Atkins. The trial judge found this separate, independent fact from an examination of all the

evidence in this case and after argument of counsel. The Court further found that the Thomas Atkins appearing on the 1895 authenticated roll of Creek Indians and later on the roll of Creek Indians as compiled by the Commission to the Five Civilized Tribes opposite No. 7913 and approved by the Secretary of the Interior was in fact the illegitimate child of the said Minnie Folk, *nee* Atkins. And the Court in this particular finding said further that the said Thomas Atkins so enrolled was not the son of Nancy Atkins. Here the Court distinctly declared that from all evidence in the case, the Thomas Atkins now under consideration was the son of Minnie and not the son of Nancy. And the Court further found specially, as he did in other findings, that Minnie Fold, *nee* Atkins was the sole heir of that Thomas Atkins, and inherited the property now in controversy.

We beg to say that these findings show on their faces an exhaustive consideration of all the evidence by the trial court, and such findings carry with them great weight and cannot be easily overturned, and these findings were in all things sustained by the Circuit Court of Appeals.

On page 144 of the record we quote from the memorandum opinion of Judge Campbell which again reinforces our position as to the care with which he considered this case:

> "Time and space will not be taken to refer to nor analyze in detail, but after a most careful examination of all the evidence the Court finds that Minnie Atkins had an illegitimate male child born to her during the early part of June, 1885 at the home of a colored woman known as Granny Letcher in the City of Leavenworth, Kansas, and that she named this child Thomas Atkins."

Nowhere is a specific finding by the trial court not only that Minnie was the mother of this particular Thomas Atkins, but a finding as to the date of his birth and as to the place where he was born. On page 145 the trial court said this:

> "The court further finds that prior to the compilation of the tribal roll now known as the 1895 authenticated roll of the Creek Tribe of Indians, Minnie Atkins had conveyed information to certain of her relatives in the Indian Territory of the fact of the birth of Thomas Atkins, which information was eventually imparted to the tribal authorities compiling the roll and that the name Thomas Atkins appearing at 213 of Euchee Town on the 1895 authenticated tribal roll was placed on said roll by the tribal authorities compiling the roll as the child of the defendant, Minnie Atkins, pursuant to

such information. The Court finds that the Thomas Atkins appearing on the 1895 authenticated tribal roll and later on the Dawes Commission roll is in fact the illegitimate child of said Minnie Atkins, born, as aforesaid, in the City of Leavenworth, Kansas, in the early part of June, 1895, and is not the child of Nancy Atkins."

We do not feel it necessary to pursue this argument further. Every fact and circumstance of this case, outside of the rolls, shows that the Thomas Atkins enrolled by the Dawes Commission was the son of Minnie Atkins. The rolls show the same tning, we believe, conclusively, and these rolls are taken and considered as having the very highest probative force. Every fact and circumstance, we truly believe, of this case show that Nancy Atkins never had a son; that she had a girl child born practically dead; that her case is a pure fabrication from beginning to end, and the two courts below held it to be so, and we believe that no fair consideration of this evidence can find any ground upon which the claim of Nancy Atkins can stand in a court of equity.

The learned judge who tried this case below patiently read and considered the deposition evidence in this case; he patiently heard and con-

sidered the oral evidence given in this case. It was voluminous; it required a great amount of care and attention. He solemnly adjudged that the claim of Minnie Atkins as to the birth and parentage of Thomas Atkins enrolled by the Dawes Commission was true. He held that the claim of Nancy Atkins was untrue, and this finding was affirmed by the Circuit Court of Appeals, 8th Circuit.

We contend that there is nothing here which calls for any change or modification of the decree of the Honorable Trial Judge. We respectfully submit that this case ought to be affirmed.

The Court will keep in mind that while Nancy Atkins has appealed from the judgment of the court below, the Government has also appealed. We have filed in this court a more elaborate analysis of the evidence as to the existence of Thomas Atkins as the son of Minnie Atkins and we beg that the Court will consider this brief against the Government in connection with the brief herein filed against the claim of Nancy Atkins.

Respectfully submitted,

C. B. STUART,
LEE BOND,
E. C. HANFORD,
Solicitors for Minnie Folk, Chas. Page, et al.

INDEX

	Pages
History and Statement of the Case	2–7
Authorities cited—	
United States v. Minnie Atkins, et al., 268 Fed. 927	2
Kimberlin v. Commission, 44 C. C. A. 109, and 114 Fed. 662	4
U. S. v. Wildcat, 244 U. S. 111 (61 L. Ed. 1024)	5
First Proposition—	
Finding of Dawes Commission that Thomas Atkins lived after April 1, 1899, was a finding of fact that he was not a myth, and this finding cannot be impeached or attacked upon the mere allegation that he was actually a myth	7–21
List of authorities under First Proposition—	
Kimberlin v. Commission to Five Civilized Tribes, 114 Fed. 662	8
United States v. Wildcat, et al., 244 U. S. 111, (61 L. Ed. 1024)	9
United States v. Hawkins, et al., 217 Fed. 11	11
United States v. Throckmorton, 98 U. S. 61 (25 L. Ed. 93)	17
Second Proposition—	
Thomas Atkins, who was enrolled by the Dawes Commission and who appears upon Creek Rolls as a Citizen of said Tribe, was not a myth, but actually existed and was living April 1, 1899, and was in fact the son of Minnie Atkins and enrolled as such by the Dawes Commission	21–45
Preliminary Statement	22–27
The Government is foreclosed in the facts, three courts having decided this question against the Government	22

Pages

Cases cited—
Washington Security Co. v. U. S. (234 U. S. 76 (58 L. Ed. 1220).
Gilson v. U. S., 234 U. S. 380 (58 L. Ed. 1361).
Baker v. Schoeffield, 243 U. S. 114 (61 L. Ed. 626) ---------- 22
What the rolls show and their legal effect ---------- 27–45
Folk v. United States, 233 Fed. 188---- 29, 30
United States v. Wildcat, et al., 234 U. S. 111 (61 L. Ed. 1024)---------- 32, 38
The Evidence ---------- 45
Evidence on behalf of Minnie Atkins---- 45–78
Atchison, David (R. 2842)---------- 47
Anderson, Charlie (R. 3273)---------- 60
Adams, Alva (R. 3302)---------- 61
Allen, James M. (R. 3139)---------- 59
Angell, W. H. (R. 3659)---------- 67
Atkins, Minnie (R. 3910)---------- 71
Baugh, Robert L. (R. 4553)---------- 76
Bell, L. B. (R. 2859)---------- 47
Bond, Lee (R. 4389, 4632)---------- 77
Brown, Samuel W. (R. 3682)---------- 68
Carpenter, Dr. C. R. (R. 2997)---------- 52
Collins, Cornelia Hyde (R. 2826)---46 and 176
Cowling, W. K. (R. 3131)---------- 58
Cobb, Mattie E. (R. 3163)---------- 59
Curtis, E. O. (R. 4169)---------- 75
Crilley, Elof A. (R. 3319)---------- 62
Crilley, George (R. 3332)---------- 62
Couch, John (R. 3480)---------- 65
Couch, Ben (R. 3678)---------- 68
Doidge, William A. (R. 4620)---------- 77
Delaney, Patrick (R. 3117)---------- 57
Ford, Alexander (R. 2913)---------- 50
Ford, William D. (R. 2926)---------- 50

Pages.

Funk, Edward C. (R. 3653) 66
Foreman, Grant (R. 3870) 71
Fite, Dr. F. B. (R. 4647) 78
Folk, Minnie (nee Minnie Atkins) (R. 3910) ..... 71 and 36
Folk, Harry B. (R. 4163) 75
Gempel, W. P. (R. 3086) 56
Hopkins, A. W. (R. 3067) 55
Harris, Max A. (R. 3096) 56
Heis, Frank (R. 3110) 57
Higgins, Thomas (R. 3292) 61
Hodge, D. M. (R. 3663) 67
Hanford, Edward C. (R. 3026, 3686, 3737, 3820) 69
Hunt, Eugenola (R. 3865) 70
Humphrey, Thomas (R. 4458) 76
Johnson, A. L. (R. 2960) 52
Jones, Dennis (R. 3372, 3395, 3434) 64
Josey, R. A. (R. 3666) ..... 68 and 183
Kirkbride, Thos. E. (R. 3661) 67
Kazey, Lizzie (R. 3098) 56
Kinney, George (R. 4158) 74
Kennedy, J. C. (R. 3567) 67
Lange, Adolf (R. 3047) 54
Long, F. B. (R. 3497) 66
Lipscomb, C. (R. 4612) 76
McCormick, Ina Massie (R. 2905) 50
Meyers, Stanc e(R. 3735, 3769) 69
McNabb, Jr., Alexander J. (R. 3832) 70
McComb, Catherine Sisk (R. 3852) 70
Nichols, Richard (R. 3254) 60
Page, Charles (R. 3876, 3897) ..... 71 and 184
Ripley, Emily (R. 2797) ..... 45 and 172
Riley, Mrs. Lucinda R. (R. 2870) 48
Roderick, John F. (R. 2937) 51
Sheehan, Mrs. John (R. 2835) 46
Swoboda, Theresa (R. 3286) 60

	Page
Stanton, Mike (R. 4175)	75
Taylor, F. K. (R. 8616)	77
Taylor, O. B. (R. 3770, 3736)	69
Tucker, Phillip (R. 2890)	49
Welch, Mrs. John (R. 2877)	48
Webster, Milton (R. 3030)	53
Wendorff, J. H. (R. 3734, 3766)	69
Evidence Against Minnie Atkins	78
Allen, R. C. (R. 177, 442, 4640)	79
Angell, W. H (R. 178)	79
Allen, Mary Catherine (R. 462)	94
Bruff, J. F. (R. 173)	79
Brown, Samuel W. (R. 214)	80
Bixby, Tams (R. 266, 4645)	80
Bruff, J. L. (R. 442)	93
Batterson, E. L. (R. 487, 492)	95
Banks, Walter (R. 1318)	102
Beeshler, John T. (R. 1517)	108
Beeler, Helen (R. 1695)	115
Bierley, James F. (R. 1704)	115
Brown, Larry (R. 1712)	116
Bradford, Elizabeth (R. 1825)	119
Behler, M. (R. 1865)	119
Brown, Nettie (R. 1997)	122
Baugh, Robert L. (R. 2159)	127
Brewster, Stuart (R. 3902)	127
Bell, T. W. (R. 4433)	129
Blakeney, B. B. (R. 4446)	130
Cain, Geo. F. (R. 494)	95
Cranston, Wm. A. (R. 1110)	98
Collins, Patrick (R. 1627)	113
Collins, Mary A. (R. 1643)	113
Cunningham, Mary N. (R. 1673)	115
Clinton, George (R. 1716)	116
Callahan, Joseph H. (R. 1721)	116
Cranston, Joseph A. (R. 1743)	117
Carter, Julia T. (R. 1924)	121

	Page
Cook, Fred S. (R. 4522, 4535)	133
Deen, Nettie Robertson (R. 328)	84
Dotter, George W. (R. 1462, 1468)	104
Dassler, C. F. W. (R. 1462, 1468)	107
Dawes, Wm. E. (R. 1654)	114
Dixon, Clarence (R. 1714)	116
Dale, George (R. 1931)	121
Donovan, Irwin (R. 4451)	130
Dillman, Elizabeth (R. 4462)	131
Eckert, Joseph A. (R. 1583)	110
Endress, Ernest (R. 4382)	128
Ewing, Dr. Finis W. (R. 4469)	131
Elliott, D. G. (R. 4587)	135
Foy, Julia Grodevant (R. 382)	89
Fritsche, Edward Charles (R. 1221, 1256)	101
Feth, Wm. P. (R. 1438)	105
Flint, Georgia (R. 2075)	125
Gregory, Noah (R. 233)	80
Green, Thos. W. (R. 313)	84
Grodevant, Frank J. (R. 388, 397)	90
Gertrude, Sister Mary (R. 480)	95
Giacomini, O. (R 1113)	99
Greenslade, Rush (R. 1215, 4637)	100
German, W. P. Z. (R. 1411)	104
Gatewood, Emma (R. 1975)	122
Hopkins, P. B. (R. 182, 213)	79
Hyde, Laura E. (R. 341)	85
Hamilton, Claudius A. (R. 347)	86
Hamilton, Mary Spain (R. 360)	88
Hesse, John P. (R. 441)	92
Hanford, E. C. (R. 1315, 1411)	102
Hopkins, LaBan Gardner (R. 1477)	107
Hudson, Charley (R. 1747)	118
Hunt, Floyd (R. 4386)	128
Hutchings, W. T. (R. 4441)	130
Isam, Fanny (R. 1969)	121

Page

Jensen, Mary (R. 306)---- 96
James, Sadie (R. 510)---- 97
Jones, Martha (R. 1121)---- 99
Jones, Dennis (R. 1160)---- 100
Jackson, Wm. (R. 1615)---- 111
Jackson, Mrs. Margaret (R. 1669)---- 114
Kelley, Father Bernard Stephen (R. 473)---- 94
Kirk, Clara (R. 1128, 1136)---- 99
Ketcherson, John C. (R. 2085)---- 125
Kennedy, J. C. (R. 4465)---- 131
Kersten, Frank (R. 4454)---- 130
Larkin, R. O. (R. 43763---- 127
Lower, Mary (R. 1906)---- 120
La Vallay, Eliza (R. 1859)---- 120
Lieber, John G. (R. 253, 258)---- 80
Land, Mary (R. 496)---- 96
Merrick, Edward (R. 3451)---- 81
Miller, W. H. (R. 338)---- 85
Matthews, Elmo T. (R. 483)---- 95
Mann, Sarah E. (Bettie) (R. 1052)---- 97
Montgomery, Frank L. (R. 1367)---- 103
Metscham, Fred (R. 1450)---- 105
Malone, Joe A. (R. 1480)---- 107
Miller, Martha (R. 2039)---- 123
McKenzie, Tom M. (R. 2049)---- 123
Moats, C. M. (R. 2059)---- 124
Mozee, Thomas (R. 4482)---- 132
Montgomery, F. L. (R. 4545)---- 134
Malcomb, C. B. (R. 4559)---- 134
Norton, Margaret (R. 407)---- 91
Nash, Samuel (R. 1339)---- 102
Neidlinger, Eli (R. 1730)---- 117
Nash, Mary (R. 2065)---- 124
O'Donnell, J. J. (R. 476))---- 94
O'Connor, James (R. 499)---- 96
O'Day, Alice (R. 1535)---- 109

Page

Peterkin, Charles (R. 420)---------- 91
Purcell, John M. (R. 1620)---------- 112
Paire, Alice (R. 1885)---------- 120
Phillips, John (R. 1935)---------- 121
Robertson, Alice M. (R. 290, 298)------ 83
Rosser, Malcom E. (R. 1301)---------- 102
Rohr, John (R. 1422)---------- 104
Reynolds, Roy (R. 1708,1711)---------- 116
Reed, Belle (R. 1839)---------- 119
Rogers, C. H. (Hook) (R. 4579)-------- 135
Shanafelt, Richard (R. 151, 176)------ 78
Stafford, Mrs. John (Cornelia) (R. 444) 93
Stafford, Major John (R. 450)---------- 93
Schott, A. L. (R. 478)---------- 95
Smith, A. J. (Rube) (R 1179)---------- 100
Seckler, Harry H. (R. 1455)---------- 106
Shagnessy, W. B. (R. 1514)---------- 108
Schott, A. L. (R. 1581)---------- 110
True, Wm. W. (R. 1457)---------- 106
Thomas, Laura (R. 1763)---------- 118
Tutt, Mattie (R. 2031)---------- 123
White, J. B. (R. 1104)---------- 98
Walker, C. S. (R. 1208, 1283)---------- 100
Williams, W. I. (R. 1294)---------- 101
Williams, Katherine (R. 1732)---------- 117
Woodfolk, Connie (R. 1855)---------- 119
Winfield, Richard Joseph (R. 2026)---- 123
Wilds, Mars. A. G. (R. 2132)---------- 126
Warren, W. D. (R. 4392)---------- 129
White, Dr. John Hutchins (R. 4538)---- 134
Wadsworth, Mitchell (R. 4598)---------- 136
Vinson, Irene (R. 1124)---------- 99
Van Duzie, Mrs. Ada Amerly (R. 4505) 132
Young, Lewis (R. 1662)---------- 114
Analysis of evidence as to existence of Tommy Atkins, pro and con---------136–161
Sam Browne's testimony ----------161–166

Pages
Conflicting statements of Minnie Atkins 166–179
Care with which Dawes Commission eyamined rights of citizens of Creek Nation, and exhaustiveness with which every case was considered 179–182
Page and associates were good faith purchasers 182
Law of this case and necessary correctness of judgment rendered from application of such law 190

LIST OF AUTHORITIES

United States v. Minnie Atkins et al., 268 Fed. 927 2, 3, 4
Polk v. United States, 233 Fed. 177 6, 22, 29, 30, 139, 140, 141, 142, 183
Kimberlin v. Com. to Five Civilized Tribes, 114 Fed. 662 (44 C. C. A. 109 4, 8
United States v. Hawkins, 217 Fed. 11 11
United States v. Wildcat et al., 244 U. S. 111 (61 L. Ed. 1024) 5, 6, 9, 11, 15, 20, 32, 38, 191
United States v. Throckmorton, 98 U. S. 61 (25 L. Ed. 93) 17
Washington Security Co. v. U. S., 234 U. S. 76 (58 L. Ed.) 1220) 22
Gilson v. U. S., 234 U. S. 380 (58 L. Ed. 1361 22
Baker v. Schoffield, 243 U. S. 114 (61 L. Ed. 626) 22
Woodward v. De Graffenried, 238 U. S. 284 179

Page v. Atkins, Pac. Rep. ann. elect. vol 202 p. 80) - Oct 2, 1922.

REPORTS OF DAWES COMMISSION

Report of Oct 3, 1898, page 6 179
Report of year 1902, page 36 180
Report of year 1903, page 29 180

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, Appellant, *v.* MINNIE ATKINS ET AL.	No. 45.
NANCY ATKINS, H. A. RIDGWAY, Guardian of Nancy Atkins, et al., Appellants, *v.* THE UNITED STATES OF AMERICA, MINNIE FOLK, nee Atkins, et al.	No. 46.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF ON BEHALF OF MINNIE FOLK (nee Atkins), CHAS. PAGE ET AL.

History and Statement of the Case

This litigation was commenced more than eight years ago. The Government brought suit in the U. S. Court for the Eastern District of Oklahoma, to set aside a patent to one Thomas Atkins, No. 7913. The original bill filed by the Government charged specific acts of fraud against Minnie Atkins but these allegations of fraud were all abandoned in the amended answer and the Government prosecuted the case on but two theories. First, that Thomas Atkins was a myth, second, that being a myth, the judgment of the Dawes Commission in enrolling him, should be set aside, simply and purely by reason of the allegation that he was a myth and proof of same. This appeal is prosecuted from a judgment of the Circuit Court of Appeals for the Eighth Circuit, affirming the judgment of Judge Campbell of the U. S. Court for the Eastern District of Oklahoma, which declared that Thomas Atkins was in fact the son of Minnie Atkins, was not a myth and was lawfully enrolled.

In order that we may get the exact contention of the Government here, in the Circuit Court of Appeals and in the Trial Court, we call attention to this case reported in Federal Reporter, Volume 268, Page 927. The Circuit Court of Appeals at this page, declares that the Government abandoned its contention that the Dawes Commission acted arbitrarily and without evidence and proceeded to try

its case upon the naked proposition, that Thomas Atkins never existed and therefore the Judgment of the Dawes Commission should be set aside.

The learned Judge who rendered the opinion of the Circuit Court of Appeals, reviews the contention of the Government and stated in a nut shell the contention there and the contention here is, that the Government may, by making the mere allegation that a person enrolled by the Dawes Commission never existed, reopen a solemn judgment of the Dawes Commission and defeat that judgment by proof that the enrolled person never existed.

We challenge the correctness of this proposition here. We challenged it in the Trial Court and in the Circuit Court of Appeals. Both Courts held that the Judgment of the Dawes Commission could not be reopened, as to Thomas Atkins and the case retried by the U. S. Court upon a mere allegation that the Dawes Commission made a mistake. Those Courts held some ground of equity must be invoked as a basis to set aside the judgment of the Dawes Commission.

The Courts held that the finding of the Dawes Commission was in every instance a judgment and that those findings could never be set aside except for clear mistake of law, fraud or gross mistake of facts. None of these allegations were made in the Government's amended bill in this case. The Government simply took and now takes the high ground

that the Dawes Commission was an Ex Parte body, that its judgments were Ex Parte and therefore open to collateral attack.

We cannot understand with what propriety the Government can now urge this contention. For more than twenty years it has been held by the Circuit Court of Appeals for the Eighth Circuit, which has had jurisdiction over Indian Controversies in the Five Civilized Tribes, that the Dawes Commission was a Judicial body, having all the functions and elements of a Court, and that its judgments could not be attacked except in the same way that judgments of courts of competent jurisdiction could be attacked.

This line of authority was started with the case of *Kimberlin* v. *Commission*, 44 C. C. A. 109 and 114 Fed. 662, and has been held continuously without modification or dissent by the Circuit Court of Appeals of the Eighth Circuit, since that hearing. The Circuit Court of Appeals in this very case on Page 928, Federal Reporter 268, passed upon this question. We quote:

> "We say this because there can no longer be reasonable insistence that the proceedings before the Dawes Commission were Ex Parte. Those proceedings were adversary in their nature and the adjudication of the Commission on who should be enrolled as citizens and freedmen of the Five Civilized Tribes, what land should be allotted each and in what way and of every issue of law and fact necessary for

it to determine, in order to decide such questions, is conclusive and impervious to collateral attack."

The Circuit Court of Appeals cited among other cases the case of the *U. S.* v. *Wild Cat,* 244 U. S. 111. This decision of the Supreme Court of the U. S. was delivered by Justice Day and that case holds without any doubt that the proceedings of the Dawes Commission were Adversary and not Ex Parte and that the judgments of that Commission had all the force and effect of a court judgment. The effort of the distinguished Counsel for the Government is directed against this decision of this Honorable Court and many other decisions. Counsel for the Government commencing on Page 5, of brief, and for several pages thereafter, makes a broad contention that proceedings of the Dawes Commission were not Adversary but Ex Parte and boldly asks this Court to over-rule not only decisions of the Court of Appeals for the Eighth Circuit upon this very question covering a period of more than twenty years, but also to over-rule its decision in the Wild Cat case. Learned Counsel for the Government recognize that there is no possible way by which they can succeed in this cause except by the establishment of two propositions. First, that the action of the Dawes Commission was Ex Parte, and second, that such action being Ex Parte findings of the Commission are subject to collateral attack.

We feel that we should not consume the time of the Court in answering these propositions. The proposition of law so announced as we have already said, has already been foreclosed by this Court in the Wild Cat case in Volume 244, U. S. Supreme Court, Page 111, as cited above.

Judge Sanborn of the Circuit Court of Appeals for the Eighth Circuit in reviewing this very case, Federal Reporter 233, Page 177, has discussed these matters fully. He has shown in that opinion the incidents and elements which made the findings of the Dawes Commission a judgment of the Court. The proposition was thought to be settled by the Profession in this jurisdiction and forever foreclosed by the opinion of Justice Day in the Wild Cat case, *supra*.

We apprehend that this Court will hesitate long before it will over-rule this long line of decisions and hold now for the first time that the act of the Dawes Commission was Ex Parte and not Adversary.

Judge Campbell who tried the case in the Court below held that, in as much as the findings of the Dawes Commission constituted a judgment and in as much as its proceedings were Adversary and not Ex Parte, that the judgment of the Dawes Commission, could not be reopened by the Government upon the mere allegation that the person enrolled by the Dawes Commission never existed. It was

the duty of the Dawes Commission to ascertain whether the said person found on the Creek Rolls was entitled to enrollment and one of the facts to be found by the Dawes Commission, was whether the Creek Indian whose enrollment was being considered, was living on April 1st, 1899. The Dawes Commission in this case held that Thomas Atkins was a living person on April 1st, 1899, that he was the son of Minnie Atkins, a Creek Indian, and therefore entitled to enrollment.

Our claim is that this judgment of the Dawes Commission which was approved by the Secretary of the Interior is not open to collateral attack, that the effort of the Government in this case is a purely collateral attack upon the judgment of the Dawes Commission.

In answer therefore to this startling proposition asserted by the Counsel for the Government, we state the following proposition, which we believe to be not only correct but in line with the decisions of this Court and the Circuit Court of Appeals.

The finding of the Dawes Commission that Thomas Atkins lived after April 1st, 1899, was a finding of fact that he was not a myth and this finding of the Dawes Commission cannot be impeached or re-examined upon the mere allegation that Thomas Atkins was actually a myth.

We have long thought that this contention has been set at rest both by the repeated decisions of

8th Circuit and by the decisions of the Supreme Court of the United States. More than twenty years ago the 8th Circuit defined the nature and character of the powers conferred upon the Dawes Commission by the Congress of the United States, and no clearer statement of it has yet been made by any court than found in the case of *Kimberlin* v. *Commission to the Five Civilized Tribes,* 114 Fed. 662. We quote briefly from this case, because it has been affirmed and reaffirmed time and again by the 8th Circuit, and the doctrines therein laid down have been expressly approved by the Supreme Court of the United States. The Court in that case said:

> "Under these acts of Congress the Commission to the Five Civilized Tribes is a special tribunal vested with judicial power to hear and determine the claims of all applicants to citizenship in the Five Tribes, and the enrollment or refusal to enroll the applicant in each particular case constitutes its judgment in that case. In the case before us the tribunal has heard and determined the case of the plaintiffs. Whether its decision was right or wrong is immaterial in this Court, and this question will not be considered. Congress saw fit to entrust to the judicial discretion of the Commission its determnation of the application of the plaintiffs in error, and of ev-

ery question of law and fact which that decision involved."

The doctrine of this case had been imbedded in the judicial decisions of the 8th Circuit for years before it was examined by the Supreme Court of the United States in what is known as the Thlocco case, *United States* v. *Wildcat et al.*, 244 U. S. 111 (61 L. Ed. 1024).

Mr. Justice Day, delivering the unanimous opinion of the Court in that case held that the action of the Dawes Commission with reference to enrolling Indians of the Five Tribes was judicial in its character; that it was in no sense an *ex parte* proceeding, but was an *adversary* proceeding; that the Creek people had a right to appear, and did appear, before that tribunal and protest the right of applicant for citizenship.

The Supreme Court held also, in the Wildcat or Thlocco case, that it was not surprising that the Dawes Commission made some mistakes, considering the vast amount of work before it, and that those mistakes either of law or of fact could never be re-examined and reconsidered by a court of equity, except upon some well known ground of equity jurisprudence, to-wit, mistakes of law, gross mistake of fact, or fraud. And this Court held that unless one of these well known grounds of equity was invoked for the purpose of attacking the judg-

ment of the Dawes Commission, that judgment was impervious to attack.

The Dawes Commission found, as did Judge Campbell, the trial judge (and we shall quote at length from his opinion hereafter) that Thomas Atkins was actually living on and after April 1st, 1899, and therefore was entitled to enrollment. What difference can there be between an Indian who died prior to April 1st, 1899, and an Indian who never existed at all? Clearly an Indian who died prior to April 1st, 1899, was just in the same position as a person who actually had never existed, because he was cut down by that arbitrary date by virtue of the Creek Agreement and the federal statutes.

Now, the Dawes Commission, as said by Judge Campbell, who tried this case, had ample evidence before it, even outside of the rolls of the Tribe, that Thomas Atkins was the son of Minnie Atkins and therefore enrolled him as such; and held that same Thomas Atkins, the son of Minnie Atkins, was a living breathing being on and after April 1st, 1899. This was a finding by the Dawes Commission, necessarily, that Thomas Atkins was not a myth and the sole inquiry for this Court now to enter upon is whether or not there was any substantial evidence before the Dawes Commission which justified the judgment of the Dawes Commission as to Thomas Atkins. This identical proposition was an-

nounced in the Circuit Court of Appeals in what is known as the Hawkins case, *U. S.* v. *Hawkins*, found in the Federal Reporter, Vol. 217, at page 11. The Court there said:

> "We are of the opinion that as Chester Hawkins never had any existence so far as being entitled to an allotment of land is concerned, and having died before April 1st, 1899, he was, as far as being an applicant for a patent to the land in controversy is concerned a myth."

Here the Court, in an opinion which was unanimous, declared that an Indian who died prior to April 1st, 1899, was in the same position as an Indian who never existed at all. If, therefore, these proceedings of the Dawes Commission were not *ex parte*, but were strictly adversary, and binding, as Mr. Justice Day said in the Thlocco case, upon all parties in interest, then the Dawes Commission has, from reliable and substantial evidence before it, foreclosed the government and foreclosed all other parties in interest, because the Dawes Commission definitely held that Thomas Atkins was not a myth, when it held that he was living on April 1st, 1899, and therefore entitled to enrollment. To state the proposition in another way:

The action of the Dawes Commission as to the right of an applicant to enrollment on evidence taken by such Commission is a judgment, and that

judgment is conclusive, as has been held time and again by the 8th Circuit Court, as to all matters which were necessary to be found by the Dawes Commission in order to give the particular Indian the right to enrollment as a citizen and member of the Tribe. So that it makes no difference in this case whether Thomas Atkins was really a myth or not, and whether upon an independent and new investigation he could be shown to be a myth; because inasmuch as the Dawes Commission has already passed upon and decided that particular question of fact, there is no way by which the finding as to that fact can now be re-examined, except upon certain equitable principles which are not invoked in this case. As we understand the brief for the government, they are now making the naked contention that by alleging that Thomas Atkins was a myth, they had the right to reopen the judgment of the Dawes Commission and re-examine that question. Our answer is that they fail at the outset, not only because the courts which have examined it have held against their contention, but because upon reason and authority, neither the trial court nor this Court can put itself in the situation of the Dawes Commission, acting as a judicial body, and redetermine questions of fact which that Commission was compelled to investigate and answer before it could admit the Indian citizen to enrollment.

We feel that this ought to end this controversy now, so far as the government is concerned. There is no allegation on the part of the government here, and no proof, that any fraud was ever practiced by Minnie Atkins or anyone for her, upon the Dawes Commission; there is no allegation here which would justify this Court in holding that one of the great principles of equity jurisprudence had been successfully invoked and alleged by the government here to justify the reopening of the judgment of the Dawes Commission.

We beg at this point to call the attention of this Court to the specific findings of the trial judge, upon the action of the Dawes Commission with reference to the enrollment of Thomas Atkins. On page 148 of the record the trial judge used this language:

"The Court further finds that the Dawes Commission, in enrolling Thomas Atkins as aforesaid, did not act arbitrarily, and without evidence, but had before it substantial evidence as to the right of Thomas Atkins to enrollment, and as to his being the son of Minnie Atkins."

Again the court said:

"We further find that the Thomas Atkins enrolled as No. 7913 on the final roll of Creek Indians is the son of the defendant, Minnie Folk, nee Atkins."

At the bottom of page 147 of the record the Court found as a matter of law that the "evidence offered by the complainant, the government, in support of the contention that Thomas Atkins was and is a mythical person, is incompetent, irrelevant and immaterial," and that "the government was precluded by the judgment of the Dawes Commission from a retrial of the question as to the existence or non-existence of Thomas Atkins."

The trial court evidently took the view which we are now asserting to the court: that the government had no right, upon the allegation that Thomas Atkins was a myth, to retry that question, because it appeared from the record and from the evidence taken by the Dawes Commission that the Dawes Commission had already tried that identical question of fact, and had found that Thomas Atkins was not a myth but a living person on April 1st, 1899. It seems clear to us, therefore, that this case, as to the government, must end here. The judgment of the Dawes Commission is found by the trial court not to have been arbitrary, but to have been based upon reliable and substantial evidence.

The court below, however, while it ruled that the government could not make the attack upon the judgment of the Dawes Commission on the mere allegation of a myth, yet permitted the government to introduce all the testimony, written and oral, which it desired to introduce on the question of

myth, and when the trial court came to announce its final judgment or decree, it said, first, that the government had no right upon the mere allegation that Thomas Atkins was a myth to retry that question already tried by the Dawes Commission; but found even if the government could do so that Thomas Atkins was not a myth but was living on April 1st, 1899, and was in fact the son of Minnie Atkins.

We do not feel, however, that we ought to be compelled, nor do we feel that this Court ought to be compelled, to go through this large record to determine whether Thomas Atkins actually ever existed or not, when the decisions of the Circuit Court and of the Supreme Court of the United States are so clear and compulsive upon this question, to-wit: that no material fact necessary to be found by the Dawes Com- can be re-examined or reconsidered by another court upon a simple allegation that the Dawes Commission made a mistake in its findings. The Supreme Court of the United States in the Wildcat case, above cited, declared that the Dawes Commission was expected to make some mistakes, and naturally would make some mistakes; but also, in the same breath, declared that these mistakes were not open to inquiry, unless they were so gross as to shock the conscience of a court of equity. Judge Campbell, the trial judge, in his supplemental memorandum opinion, on page 143 of the record,

declared that he had *patiently and carefully* examined every line of evidence, both written and oral, in this case, and that his judgment was convinced that the attack of the government on this patent on the ground that Thomas Atkins was a mythical person was not sustained, but was overwhelmed by the preponderance of evidence in favor of the existence of Thomas Atkins as the son of Minnie Atkins.

We, therefore, confidently assert that the government has no case here on the law, and contend that the government is shut out by repeated adjudications of the 8th Circuit and this Court, and that no proper legal attack has been made by the government upon the judgment of the Dawes Commission in this particular case, because the government is here boldly asking this Court to re-examine and determine the correctness of the judgment of the Dawes Commission as to the vital facts necessary to be found by it, on the mere allegation that the Dawes Commission was mistaken. We hold that this position of the government is untenable, and we invoke the judgment of this Court upon this preliminary question as ending and disposing of this case finally.

Both the question as to the fraud alleged in this case by the government in procuring this patent, and the question as to whether the government had the right, under the naked allegation, that

Thomas Atkins was a myth, to reopen and retry the whole case tried by the Dawes Commission, were exhaustively considered by the trial judge, in a written opinion filed in this case on the first day of December, 1917, and found on page 130 of the transcript. This opinion is so carefully considered, and the authorities so thoroughly examined, that we feel we can add nothing either to its clarity or to its reasoning. We therefore commend it to the Court, as sustaining in every way the proposition already asserted in this brief. We may add, however, in our own way, to this opinion these suggestions:

The case of *United States* v. *Throckmorton*, 98 U. S. 161, which this Court well knows, declared the rule to be that where a decree had been rendered by a judicial tribunal, and where the action of the tribunal was, in no sense *ex parte* but thoroughly adversary, no evidence could be received to set aside the judgment of the court on the ground that perjury had been committed or false documents had been used in evidence. This upon the theory that the evidence so offered touched the very question decided by the Court which rendered the decree.

We apprehend the distinction to be this: That where the action of the tribunal is *ex parte*, and all parties in interest have not had an opportunity to be heard, the action of the court or tribunal may be attacked probably for perjury and for the

use of false instruments as evidence; but, where the tribunal acted, not *ex parte* but with all the parties before it, with an opportunity to be heard, then the question as to whether perjury or false instruments were used in the hearing cannot be reopened and reconsidered.

It is hardly necessary to argue this question of fraud as alleged, because the government, in its brief which it has furnished us, has abandoned the position that there is any proof of fraud, such as would justify the reopening of this case. The government is now standing simply and distinctly, upon two propositions, named in its brief:

First. That Thomas Atkins was a myth, and that this allegation alone authorizes the reopening of the case; and,

Second. That, if he was a myth, the patent is void.

With reference to the myth question, the learned trial judge, beginning on the bottom of page 141 of the transcript, uses this language:

> "It is true that if it were conceded and not an issue in this case that the Thomas Atkins who appears upon the roll, never in fact existed, it would follow that the patent made in his name is a nullity and did not divest the title from the Creek Tribe, for, of course, there must exist in every grant, the grantor and the

grantee. It is charged in this case that the grantee never existed, but far from being conceded, that charge is denied, and an issue is framed on that question. It is first involved, as we have seen, in the charge of fraud, but the fraud charged is not such as justifies this Court in retrying the questions of fact conclusively determined by the Dawes Commission. Therefore, if this issue may be tried in this case it must be because it was not a necessary issue of fact before the Commission or because nothwithstanding it may have been one of the questions of fact necessarily decided by the Commission, it is of such a nature as could not have been conclusively decided as against a retrial of the same issue between the same parties or their privies in this case. It was necessary that the Dawes Commission should find that the Thomas Atkins enrolled by it was alive April 1, 1899, before it could adjudge him entitled to enrollment, and that it did so find is conclusively presumed from the fact that it enrolled him. This finding is presumed to have been upon evidence until the contrary is clearly and convincingly established. Not only does the record fail to establish that such finding was without evidence, but on the contrary, is strongly to the effect that there was such evidence. Of course, a finding that he was living April 1, 1899, is a finding that he

was not a fictitious or mythical being. Therefore, the question of the very existence of Thomas Atkins was necessarily considered and determined by the Commission. It is not perceived on what theory this necessary issue of fact, once determined by the Commission, is any less conclusively determined, than is the question of Creek blood or residence in the tribe. As said in the Thlocco case, a correct determination or conclusion was not necessary to the binding character of the decision, and even though now it should be most conclusively and convincingly shown that Thomas Atkins is a myth, it cannot avail the plaintiff, for that is not a question which this Court can retry."

We have been at some pains to stress the proposition which we have been discussing, because we are convinced from our examination of the decisions of this Honorable Court, and of the Eighth Circuit Court of Appeals, that it concludes the government's case, and makes it unnecessary to consider any other feature.

In conclusion, we beg to add that suggestion is made that this fact of existence of Atkins is jurisdictional, and we gather from the argument upon such suggestion, that all that is necessary to make a good bill of complaint in a case of this character, is to allege either that the applicant to whom patent issued was a myth or that he died prior to April 1, 1899. If the contention of appellant is

true, all that the government needs to do in its bill of complaint, ten, twenty, thirty or fifty years after patent is issued, in order to cancel the patent, is to allege that the applicant whose case is being considered, died prior to April 1, 1899, because if its contention is true and this action is jurisdictional to the extent claimed, every judgment rendered by the Dawes Commission upon evidence is void, if it shall subsequently appear that the applicant was a myth, or, if not a myth, died prior to April 1, 1899. This statement, it appears to us, is not only extraordinary, but paradoxical. If the Dawes Commission was empowered to determine these very questions of fact, and did determine those very questions of fact, then its judgments amount to nothing, and are without effect to sustain a single Indian title, if in years after, it can be shown that the Dawes Commission was simply mistaken about the facts.

The next proposition, of course, if the Court shall not agree with the contention we have just made, is purely one of fact and may be stated as follows:

Thomas Atkins, who was enrolled by the Dawes Commission and who appears upon the Creek rolls as a citizen of said tribe, was not a myth, but actually existed and was living April 1, 1899, and was in fact the son of Minnie Atkins, and enrolled as such by the Dawes Commission.

Before we go to a brief discussion of the facts in this case, we beg to say that under decisions of this Court, the Government is foreclosed on the facts. Three courts have decided this very question of fact against the Government. This Court has repeatedly held that where two lower courts have passed in the same way upon the same question of fact, this Court will not review that question of fact.

We think it unnecessary to cite the many opinions of this Court sustaining this doctrine. The matter has been thoroughly examined and determined in the following cases:

—*Washington Security Co.* v. *U. S.*, 234 U. S. 76;

—*Gilson* v. *U. S.*, 234 U. S. 380;
—*Baker* v. *Schoffield*, ~~234~~ 243 U. S. 114,

and many cases cited therein.

The facts of this case have been determined by the Circuit Court of Appeals, as shown by the opinion of that court in this case, 233 Federal, Page 178. In that case Judge Sanborn held that the rolls of the Creek Tribe alone showed Thomas Atkins to be the son of Minnie Atkins and that he was living after April 1st, 1899.

Judge Campbell as we shall show hereafter, held specifically that Thomas Atkins was not a myth and was the son of Minnie Atkins and the

Circuit Court of Appeals in this very case reviewed that judgment of Judge Campbell and held that Judge Campbell's finding of fact, that Thomas Atkins was not a myth, was fully sustained by the record evidence.

We confidently assert, therefore, that where three courts have passed on a question of fact, this Court will not again review that question of fact, but even though this be true, we shall briefly discuss the facts in the case.

As said before, the trial court, although holding that the government could not reopen this case on the allegations of its bill, nevertheless permitted the government to introduce any and all evidence that it desired with reference to the existence or non-existence of Thomas Atkins, and after thousands of pages of testimony had been taken, and hundreds of witnesses had been examined, the Court held every question of fact in favor of the appellees in this cause. The trial court, in its memorandum opinion and its supplemental memorandum opinion, above cited, discussed this question of fact fully, and when it rendered its decree found specifically what the facts were in this case; and made a special finding as to every material question of fact. These special findings appear on pages 148, 149 and 150 of the transcript.

This Court will notice that the trial judge was careful to take up every issue of fact and dispose

of it in this decree. He found that Thomas Atkins enrolled as No. 7913, on the final rolls of the Creek Indians, was the son of Minnie Atkins. He found that said Thomas Atkins appearing on the 1895 authenticated rolls and later on the roll of Indians compiled by the Dawes Cmmission, and approved by the Secretary of the Interior, was the illegitimate child of Minnie Atkins, and not the son on Nancy Atkins. He further found that Thomas Atkins had departed this life without issue and that Minnie Atkins was his sole heir; and, in the memorandum opinion, which we have just cited, he found that this same Thomas Atkins was born in Leavenworth, Kansas, at the house of Granny Letcher, an old colored woman, and was born to Minnie Atkins at that place. He further specifically found the date of his birth. So that when we begin to consider this case, we must start out with the presumption that the finding of the trial court upon these issues of fact was correct; and the only inquiry, in our judgment, which this Honorable Court can indulge as to the judgment or decree of the trial court is for the purpose of ascertaining whether there was substantial evidence in this case to support the findings of the trial curt.

The history of this case and the manner in which it has been prosecuted by the government, to our minds, shows two things:

First. That the government spares neither time nor money in its investigation of this class of cases; and,

Second. That notwithstanding it has made every effort both in fact and law, to upset the judgment of the Dawes Commission with reference to the right of Thomas Atkins, it has signally failed.

Minnie Atkins was an uneducated, wild and untamed Creek girl. She was sent by her people to Carlisle School to be educated and prepared for life. She was unruly, and seems to have inherited all of the wandering traits of the Indian. She was first farmed out by the Carlisle School to Mr. Penrose of Pennsylvania, and, after staying there for some time, was finally farmed to Banker Hyde of Leavenworth, Kansas. At that time Leavenworth was a soldier's home, and a new town, full of adventurous characters. Minnie Atkins was a comely woman, and seems to have been unusually attractive to the male sex. Without guidance, without parental protection, and without the protection of her tribe, she was left at this soldier's town, and, of course, she went astray. She was not a girl of the town in the ordinary sense, but she was a woman who liked men's society, easily flattered, and led astray, and it was not long after she went to the Hyde home before she became pregnant. And thereafter, wandering

from place to place, she had one illegitimate child after another.

She was, it seems, a good cook, and much in demand at the forts by the families of soldiers. She went from one fort to another. She did not know that oil had been discovered upon the allotment of her child, Thomas, until long years after the allotment. Every man in the oil business became interested at once, when this oil was found, and became active, sedulous and fervent in finding out where Thomas Atkins was, if he was living, and if not, who were his heirs.

This woman, Minnie Atkins, was badgered and threatened and intimidated from every angle, and it is only a wonder that she kept her mind at all. The manner in which she was besieged, the advantage taken of her, will be discussed later under the facts of this case. Sufficient to say, as said by Judge Sanborn in the opinion on the receivership hearing in this cause, she was subjected to every sort of indignity and pressure. Notwithstanding all this, when she appeared before the Honorable Ralph E. Campbell, United States Judge who tried this cause, he believed her story, and believed the men who corroborated her story and entered a decree in her behalf.

We, therefore, with this preliminary statement, now go to the facts of this case. We propose to make a brief summary of the facts in favor of the

claim of Minnie Atkins, and a brief summary of the facts relied upon to break down her claim; and, after making these summaries of both contentions, we shall then endeavor to analyze the testimony, and see where the truth is in this case.

However, before we take up the evidence actually taken before the trial court, we desire to consider first the rolls and their effect.

WHAT THE ROLLS SHOW AND THEIR LEGAL EFFECT

It is alleged by the Government in this case that the roll of 1890, and especially the roll of 1895 and the pay roll of the Creek Tribe for 1895, were material evidence before the Dawes Commission and were used by such Commission as evidence, so that it becomes necessary at the outset to determine what these rolls actually showed, because they are a part of the evidence upon which the Dawes Commission made and predicated its census card and its final judgment.

In order to show the Court actually what was said by the Government with reference to this pay roll, on page 6 of the printed record, near the bottom, the government in the Amended Bill of Complaint uses this language:

> "The said Commission when engaged in the work of listing for enrollment the names of citizens of said Tribe, used as material evi-

dence on the question of citizenship or membership in the Tribe, certain roll or rolls of the citizens of said Tribe of Indians which had been made up for Tribal per capita payment purposes by the tribal officers and authorities prior to the date of the work of the enrollment which was being done by said Commission and which were treated and denominated as authenticated Tribal rolls, among which was the roll of Creek citizens made up in the year 1895, and commonly called the 1895 authenticated roll, and particularly did said Commission use and rely upon said 1895 roll, that the name of Thomas Atkins appeared upon said 1895 pay roll in the family appearing thereon, headed by the name Minnie Atkins, and thereby said roll showed upon its face that Thomas Atkins was in 1895 a living member and citizen of said Tribe."

The roll of 1890 shows Minnie Atkins as a citizen of the Creek Tribe of Indians. It also shows Eddie Schrimsher a member of the same Atkins group, or family, and Nancy Atkins, as members of the Creek Tribe of Indians, and right opposite the name of Minnie Atkins are the words, "Thos. & Mary, 2 children."

The roll of 1895 groups this particular Atkins family and shows the name of Ed Schrimsher, the name of Minnie Atkins, followed by four others, and then opposite No. 215 appears the name of Nancy Atkins, without children, and then comes No. 216, showing the name of John Davis, who is admitted to have been a member of this family.

Now, let us examine, for a moment, these two rolls, and assume, for the sake of argument, that the Dawes Commission largely relied upon these rolls in preparing and making out the census card which was the basis of its judgment. If the Dawes Commission had relied entirely upon the roll of 1890, it could have reached no other conclusion than that Thomas Atkins was the son of Minnie Atkins, because he was given on such roll by name and terms as the child of Minnie Atkins. If the Commission had relied exclusively upon the authenticated roll of 1895, the Commission would have necessarily found that Thomas Atkins was the son of Minnie Atkins.

In the opinion in the receivership branch of this case, Federal Reporter, Volume 233, page 188, Judge Sanborn uses this language:

> "The Act of March 1, 1901 (31 Stat. 869), provided that all citizens who were living on the 1st day of April, 1899, entitled to be enrolled under the Act of June 28, 1898, should be placed upon the rolls. The Act of June 28, 1898, was not simply an Act of Congress. It embodied and ratified the agreement between the Creek Nation and the United States, which was shortly after ratified by the Creek Nation, that the Dawes Commission should make the final roll of the latter's citizens; that for that purpose the Commission should have access to all its rolls and records, and that it might take a census of the nation or adopt any other means by the Commission deemed necessary to enable them to make such rolls.

> Among the rolls and records of the Creek Tribe, duly authenticated by the approval of the Creek Council, was a roll of citizens made by the tribe in 1890, another made in 1895, the pay roll of that nation for the year 1895, upon which a per capita payment was made of the citizens of the tribe. On the roll of 1890 appeared 'Minnie Atkins (Thos. and Mary, 2 children)'. On the roll of 1895 appeared the names of Minnie Atkins and Thomas Atkins for a payment to herself and also for a payment of a like amount to her as the per capita payment due to her son, Thomas Atkins."
>
> —*Folk et al.* v. *United States et al.*, 233 Fed. Rep., page 188.

It is clear from this statement that Judge Sanborn, who had just quoted from the Act of June 28, 1898, the provision that the Commission should make such rolls descriptive of the parties thereon so that they might thereby be identified, found no difficulty in determining what the Creek roll of 1890, what the roll of 1895, and what the pay roll of 1895 meant with reference to the parentage of Thomas Atkins. Judge Sanborn was clearly of the opinion that the roll of 1890 identified Thomas Atkins as the son of Minnie Atkins, and that the roll of 1895 made a like identification, and that, when this was followed by the payment by the tribe to Minnie Atkins of Thomas Atkins' money on the ground that Minnie Atkins was the mother of Thomas Atkins, it, insofar as the rolls were con-

cerned, settled the matter as to the parentage of Thomas Atkins and as to his existence.

The learned judge in that opinion unreservedly declared that the rolls themselves were material evidence and that they were sufficient upon which to predicate a judgment. So, recurring to the suggestion above made, if the rolls themselves were relied upon and no other evidence was taken, the Dawes Commission, in making out its census card enrolling Thomas Atkins as the son of Minnie Atkins, could not have intended to enroll him as the son of any other person but Minnie Atkins. But additional evidence was taken in this case, according to the testimony of Tams Bixby, P. B. Hopkins and Edward Merrick. No judgment of the Dawes Commission was made final until full investigation was had, and no man, woman or child was ever enrolled in the Creek Tribe upon identification from the rolls alone, but in every case the rolls were backed up and supported by evidence extraneous to the rolls themselves (see testimony of Tams Bixby, Chairman of Commission, Rec., p. 266).

We now come to the evidence outside of the rolls actually taken before the Dawes Commission. The witness Merrick deliberately testifies that he did take testimony outside of the rolls as to Thomas Atkins, and that that evidence convinced him and the Commission that Thomas Atkins was the son

of Minnie Atkins, and that by and through such evidence he made the notation on the census card that Thomas Atkins was the son of Minnie Atkins, and that his father was a white man.

We ask here that the Court mark the language of the witness Merrick, because, under the decision of the Supreme Court of the United States in the Thlocco case (*United States* v. *Wildcat et al.*, 244 U. S. 111, 37 Sup. Ct. Rep. 561, 61 L. Ed. 1024) it concludes this controversy. Merrick was asked the following questions and the following answers were returned:

"Q. I understand that you put Thomas Atkins' name on there?

A. Yes, sir.

Q. And you put Minnie Atkins as the mother of Tommy?

A. That was the information given.

Q. From that information, you intended to put Thomas Atkins up to the Dawes Commission as the son of Minnie?

A. That was the conclusion we arrived at from the information the Commission had, that Thomas Atkins was the son of Minnie" (Rec., p. 3479).

The Creek roll of Indians shows that there were four persons by the name of Thomas Atkins in the Creek Tribe placed on the final roll. The Dawes Commission, of course, as a matter of law, enrolled the one which it intended to enroll, and it did this

upon the evidence before it. If the evidence before it failed to sustain the particular case which the Commission was considering, and it took no evidence except with reference to this particular case, then it cannot be said that the Dawes Commission actually enrolled the person not in contemplation by the Commission, not covered by the evidence before it, and not in fact intended to be enrolled by the Commission.

To state the matter in another way, and it is so clear and apparently axiomatic to us that we hesitate to prolong this branch of the discussion: The Dawes Commission had a certain duty to perform, and that duty was to find the names of those Indians who were entitled to enrollment in the Creek Tribe as citizens, and they had a substantial duty to define and describe, in every way possible, the particular citizen, so that he could, in the future, be identified and not mixed or confused with any other citizen of the same name.

When the Dawes Commission took up the roll of 1890 they found a Thomas Atkins opposite the name of Minnie Atkins, and described, as Judge Sanborn says, as her child. When the Dawes Commission took up the roll of 1895, it found Thomas Atkins, together with other names, admittedly the children of Minnie, after the name of Minnie Atkins and before the name of Nancy Atkins. When the Dawes Commission came to make out the

Thomas Atkins census card and came to consider these rolls as evidence upon which it would base the census card it was dealing, and dealing alone, with a Thomas Atkins named on the rolls as the son of Minnie Atkins and as the son of no other person; so that when it took evidence outside of the rolls to sustain the statement on the face of the rolls, it took no evidence whatever except evidence going to show that the Thomas Atkins whom it was enrolling was what he appeared to be on the rolls—the son of Minnie Atkins. This being true, it conclusively follows that the Dawes Commission, by virtue of the rolls themselves and by virtue of evidence which was entirely consistent with the face of the rolls, intended and did actually enroll this certain Thomas Atkins whose name appears upon the rolls as the son of Minnie Atkins, and in doing so, found, of course, that he was a living being on April 1, 1899.

The witness Merrick (Rec., pp. 3455 and 3479) testifies that he took evidence outside of the rolls to establish the fact that Minnie Atkins was the mother of the Thomas Atkins whom the Commission was actually enrolling, and Merrick says that the Commission intended to enroll the particular Thomas Atkins as the son of Minnie Atkins. But this is by no means all. The clinching circumstances in this case as to the intention of the Dawes Commission is found by an examination of the pay roll which Merrick says was actually be-

fore the Commission, and was the main roll upon which the Dawes Commission relied as to Creek citizenship. This pay roll of 1895, which was a copy of the authenticated roll of 1895, offers some startling suggestions which can never be met by the Government in this case. The pay roll starts out with Ed Schrimsher, and then follows the name "Minnie" written over the name "Mamie" Atkins. A little lower down, the name "Alice" is written over the name "Susan," and a little lower down the name "Harvey" is written over the name "Mary." These names, which were written over the original names, were written in red ink, and the red ink names were identfiied as being in the handwriting of Mrs. Moore, wife of Napoleon B. Moore, National Treasurer of the Creek Nation and paymaster of the 1895 payment. This roll also shows the signature of Minnie Atkins, and shows her as drawing for herself and three children, among these being Thomas Atkins. The question which naturally presents itself at once is, why were these names changed and upon what evidence or information were the changes made? They were changed and corrected by the Creek Tribe in the last authenticated roll, this pay roll. It is undisputed that Minnie Atkins was personally present at the payment under this roll, that she was there in the presence of Sam Brown, who was the Town King of Euchee Town, and Ellis Childers, one of the witnesses in this case.

Minnie Atkins testified (Rec., p. 3913) as to what occurred when she went up to draw her money. She said:

> "A. Well, when I went out there I went in where they were going to pay. There was some man sitting there, but I don't know who he was, and I says 'Well, let me see the books.' He just shoved the book over to me and I looked and there was five of us on the book to draw, and that was myself and Tommy, Charley and Harvey and Alice. 'Well,,' I say, 'Alice is dead and I could not draw for her.' Well, he gave me money for four of us, that was Charley, Harvey, myself and Thomas. It was about fifty-seven dollars, I think."

She, of course, could not draw for her dead child, and was so advised, and then it was that a bracket in red ink was placed opposite the names of Alice and Thomas and the notation made "error of one." If, as a fact, Minnie Atkins did not draw for Alice but only drew for herself and three children, then Alice was the name eliminated by the Tribal authorities, and Alice was the error intended to be indicated on the pay roll. So when the Dawes Commission with this pay roll in its possession and endeavoring to fix the citizenship and identity of this particular Thomas Atkins found that Minnie had been upon the ground, that she had actually drawn money for this particular Tommy, and Ellis Childers and Sam Brown were

there, both seeing and hearing her claim this money for Thomas as her child, and there was no protest and no suggestion that any other person was the mother of this particular Thomas Atkins, or that Thomas Atkins was a myth, it was compelled to enroll the Thomas who was the son of Minnie Atkins as a living, existing Thomas Atkins.

With this pay roll before it, how could the Commission conclude otherwise than that Minnie Atkins was the mother of Thomas Atkins, No. 213, on the pay roll, and intend to enroll any other Thomas? When you compare the notations on the pay roll, which are not disputed, with the evidence actually received by the Commission, outside of the pay roll, and which Merrick says referred only to Minnie Atkins as the mother of Thomas Atkins as a matter of identity then it follows as the night follows day, that the Dawes Commission intended to enroll the Thomas Atkins in question as the son of Minnie Atkins and intended to enroll no other Thomas Atkins and did so enroll him.

But it is said that a mistake was made on the census card by the Commission when measured by the proof of Minnie Atkins herself as to the age of Thomas Atkins, and that a mistake was made as to his blood. This may be true, and yet it can in no sense affect the question now under consideration, because, as Justice Day said, the Commission was expected to make mistakes, and did make mis-

takes, but that the judgment of the Commission was still binding, notwithstanding these mistakes, until it was attacked in the manner provided by law.

Justice Day in the Wildcat case used this language:

> "A correct conclusion was not necessary to the finality and binding character of its decision. It may be that the Commission in acting upon many cases before it made mistakes which are now impossible of correction. This might easily be so, for the Commission passed upon the rights of thousands claiming membership in the tribe and ascertained the rights of others who did not appear before it, upon the merits of whose standing the Commission had to pass with the best information which it could obtain. When the commission proceeded in good faith to determine the matter and to act upon information before it, not arbitrarily, but according to its best judgment, we think it was the intention of the Act that the matter, upon the approval of the Secretary, should be finally concluded and the rights of the parties forever settled, subject to such attacks as could be successfully made upon judgments of this character for fraud or mistake."
>
> *United States* v. *Wildcat et al.*, 244 U. S. 111, 37 Sup. Ct. Rep. 561, 61 L. Ed. 1024.

Again, let us take the Creek census roll of 1890 in relation to Euchee Town, Muskogee Nation. This roll is found as the second exhibit roll between pages 4706 and 4707 of the transcript of the record.

We suggest to the Court before we consider this roll, that the photostatic copy is not complete, certain entries with reference to the Atkins family being blurred and illegible. We think learned counsel, however, will agree that we make a correct statement of the blurred and illegible portions in the suggestions that we shall make with reference to this roll. Commencing near the bottom of the roll, where the number 507 appears in the center, we come to the Atkins family now under consideration. No. 1 of that family appears to be blurred and indistinct in the record copy. The name Eddie Scrimsher, blurred, is opposite No. 1. The name Fred Bowers, blurred, is opposite No. 2. These men were cousins of Minnie and Nancy, coming from the same family and blood. After these follow the name of Mamie Atkins, Nancy Atkins and Lee Atkins. Other faded spots will be noticed on record copy; right opposite the name Mamie Atkins, and in brackets, appear the words "Thomas and Mary, 2 children." Right opposite the name of Lee Atkins appear the words "Died prior to April 1st, 1899," and following this was the notation, "Gen. Porter says he died six or seven years ago." We call attention to these faded spots on the record copy, because they are necessary to a correct examination of this particular 1890 roll, and we are quite sure that counsel will agree with us that we have correctly restored the faded spots. This roll, therefore, shows that in 1890, prior to

the alleged birth of the child of Nancy Atkins, Mamie Atkins (who was Minnie Atkins) and shown by later rolls to be Minnie Atkins, was credited with two children, Thomas and Mary. This census roll is also the authenticated roll of 1890 of the Creek Tribe. This roll was prepared by Noah Gregory, town king of Euchee Town, with the assistance of Sam Brown, his clerk, who afterwards himself became town king of Euchee Town (see Record, page 233).

We now come to the 1895 census roll of Euchee Town. It will be remembered by the Court that in 1890, on the roll of that date,Minnie Atkins was credited with two children. Five years afterwards, when the census roll of 1895 was made by the Creeks (to be found as the third roll in the record, between the pages 4706 and 4707), Minnie Atkins or Mamie Atkins is credited with four children. The authenticated Creek tribal roll of 1895, appearing as the first roll after page 4706 of the record, agrees with the census roll of the same year, and gives Minnie Atkins' four children, and her children were put between her name on the roll and Nancy, her sister, who appears as No. 5. There was evidently some mistake made as to the names of Minnie's children, so that when we come to the pay roll of 1895, which all officers testify was the main roll upon which they relied and the roll upon which money was paid out to members of the Creek tribe, the whole matter has been fully examined

and certain corrections have been made. We find on this pay roll, which is the second roll after page 4652 of the record, the Atkins family given as the second family on that roll. First appears, Eddie Schrimsher, a cousin of Minnie and Nancy. At No. 2 Mamie is scratched and the word Minnie is entered. No. 4 the name of Alice is written over Susie; Thomas, as No. 5, appears as he did in the roll of 1890. Harvey is written over Mary. Here the Creek tribe ascertained the exact names of Minnie's children. Minnie had been absent from the territory and it was difficult to procure their exact names, but the pay roll was the corrected roll and the true roll, and the pay roll represents the exact truth in this case. By an examination of that roll it will be seen that a line is drawn from the name Ed Schrimsher to the right, and the word S. W. Brown is written. This means, as shown by the evidence, that S. W. Brown (better known as Sam Brown) drew Ed Schrimsher's money for him. You will see that there is a diagonal line running from $57.60 right after the name of Sam Brown, and immediately to the left of the name Minnie Atkins down to the name Harvey Atkins, which is No. 6 in the Atkins family. This means that Minnie Atkins drew pay for four people, that is, drew four times $14.40, the amount due one, which amounts in all to $57.60, and drew for three people on the roll between her name and Nancy's name, which appears as No. 7. She drew for herself, which was

one; Charley, was two; Thomas, was three, and Harvey, was four. She found Alice's name on the roll when she drew this money, according to the evidence, and right opposite the names of Alice and Thomas on the roll, in brackets, are the words "Error of one." Minnie testified, as we have already shown, that when she found Alice's name there she told them that Alice was dead and asked if she could draw for Alice. They told her that she could not. It therefore clearly appears from this pay roll of 1895 that Minnie's children were correctly named, as they are now named in all the evidence in this case by all witnesses. These names cannot have been manufactured for the occasion, because in 1895 there was no reason why the true names of Minnie's children should not have been given. They were correctly given, and Thomas appears in that pay roll as No. 5, having already, as we have shown, appeared in the roll of 1890 and the authenticated roll of 1895, as the son of Minnie.

Another peculiar feature of the pay roll of 1895, and which we think is the most conclusive and impressive suggestion that can be made with reference to it, is the change of names and the substitution of the correct names of Minnie's children. Now this record shows, and the Court, we hope, will keep in mind that it is undisputed that Minnie, who is shown by the record to have recently died; has two living children, and had them at the time of this trial, named respectively Harvey and Charley.

When the pay roll of 1895 was finally corrected, and the proof shows that it was corrected to meet the exact truth, not only in this but in many other instances and many other families, we find Charley put down as one of the children of Minnie; we find the name of Mary changed and over that written the name of Harvey. We therefore find in this finished pay roll the names of Charley and Harvey as two of Minnie's children.

Now, there can be no dispute, because it is admitted, that Harvey and Charley were Minnie's children and got their allotments. If there is no dispute about the fact that Harvey and Charley were Minnie's children, and that the name Mary was changed to Harvey on the roll, then it conclusively appears that the pay roll actually contained two children of Minnie whose identities are absolutely unquestioned. This one fact demonstrates that information had came to the tribal authorities of the Creek Nation that Minnie had a son by the name of Charley which is undisputed; that she had a son by the name of Harvey which is undisputed, and that she had a son by the name of Thomas, and that she drew for these three children. It is fair to assume that when the Creek people made the final pay roll and adopted it, that they were just as particular in identifying Thomas as a son of Minnie as they were in identifying Charley and Harvey. It is admitted that they made no mistake in identifying Thomas as one of the children

of Minnie. In other words, the pay roll represents the true and correct roll; it is the roll upon which the Creek people relied, and according to Merrick's testimony, the roll upon which the Dawes Commission relied. Confessedly, the two children on that roll who were found to be the children of Minnie are the children of Minnie. Therefore, it would seem to follow irresistibly that the same patience and the same caution and the same vigilance which made them hunt out and put Charley and Harvey in the place of Susan and Mary, made them identify Thomas as one of her children. We strenuously urge that no other conclusion can be drawn from this roll.

The pay roll above considered does not show specifically the blood of Minnie's children, nor their ages, but does show her parentage of Thomas Atkins.. We now come to the census card prepared by the Dawes Commission, opposite page 4652 of the record. This census card gives the name of Thomas Atkins with his correct number. It gives him as 10 years of age, sex male. As shown on the Tribal roll of 1895, Euchee Town, it gives his number as 213, which corresponds to the number on the pay roll, opposite the name of Thomas Atkins. His father is given as a white man and his mother is given as Minnie Atkins, who is shown on the 1895 Euchee roll. In the body of this census card and near the middle appear these words: "No. 1 (that is, Thomas Atkins) on 1895 authenticated roll No.

213 as Thos. Atkins." This notation on the center of the card shows that the Dawes Commission was declaring and holding that the Thomas Atkins appearing on this census card was the same Thomas Atkins called Thos. Atkins on the 1895 authenticated Creek roll, thus establishing that the Thomas Akins on the census card now considered, named as son of Minnie Atkins, was the same Thomas Atkins named as son of Minnie Atkins on the 1895 roll. It is true that the age on the census card is given as 10 years and that he is given as a half-blood. These mistakes were made time and again, both as to blood and age, and they are not substantially material in determining the identity of the person actually enrolled.

The Evidence on Behalf of Minnie Atkins.

EMILY RIPLEY (Rec., p. 2797):

Went to Leavenworth in 1878 with her husband, who was in the employ of the Government as chief clerk of the military prison; knew Mrs. Lettie Grodevant, with whom she was on intimate terms and who was a near neighbor; was a frequent visitor to Mrs. Grodevant's home; saw Minnie Atkins there when she was in a pregnant condition and spoke to Mrs. Grodevant about it; fixed the year definitely as 1895 by reason of the fact that in that year she gave birth to one child and lost another; one child was born in January, 1895, and the other child died in August,

1885; definitely fixes the time that she saw Minnie Atkins in a pregnant condition, between the date of the birth of her child and the date of the death of her child in August, 1885; never saw Minnie Atkins after the death of her child in August, 1885.

CORNELIA HYDE COLLINS (Rec., p. 2826):

Daughter of Mr. and Mrs. Geo. H. Hyde; was born in Leavenworth in 1870; left there in 1888, going to Honolulu in the Hawaiian Islands, and remained there until 1897, and has since resided at Pittsfield, Mass.; knew Minnie Atkins when she worked for her father and mother, and remembers seeing a soldier on several occasions hanging around the back door of the house with Minnie; saw Minnie after she left the employ of her father and mother on Choctaw street, in Leavenworth, and was shocked to see her in a pregnant condition, and then realized why she had left the employ of her father and mother. That the occasion when she saw Minnie on Coctaw street was about two months after she left the Hyde home.

MRS. JOHN B. SHEEHAN (Rec., p. 2835):

Resides in Washington, D. C.; her husband is employed in the General Land Office; her maiden name was Maggie or Margaret Curry; lived in Leavenworth, Kansas, in 1884 and 1885 in the suburb called Bluntville near the Government reservation; was well acquainted with Mrs. Herbert Grodevant

and often assisted Mrs. Grodevant in connection with her household duties. Did not know Minnie Atkins or remember of any Indian girl ever having worked for Mrs. Grodevant.

Also testified that Mrs. Grodevant was often assisted in her home by trusties in the military prison and that she worked for Mrs. Grodevant in the summer of 1885 for about three weeks. That this employment was soon after the close of school, because she remembers a dress she was particularly proud of at that time.

David Atchison (Rec., p. 2842):

A resident of Leavenworth, Kansas, for sixty years; was 75 years of age on the 22nd day of February, 1917; was engaged in the wood, coal, ice and feed business in Leavenworth in the eighties; knew Minnie Atkins in the late fall of 1885 by the name of "Indian Minnie", when she would come to his wood and coal yard to buy coal for Granny Letcher, and that often, on those occasions, she had a baby in her arms; that Granny Letcher lived on Seneca Street, between Second and Third Street in a frame building built by a German named Dotter. Fixes the time definitely by the Leavenworth real estate boom of 1885.

L. B. Bell (Rec., p. 2859):

In the employ of the Sheffield Car & Equipment Co., Kansas City; went to Leavenworth, Kansas in

1884, and fixes the date by reason of his marriage in the fall of 1883 and going to Leavenworth in the fall of the next year to work for a transfer company; knew a woman generally called "Indian Minnie," who lived at Granny Letcher's place on Seneca Street, between Second and Third Streets; drove her in his hack from the above location to Fort Leavenworth; remembers an Indian boy at Granny Letcher's who was probably two years old when he first knew him; that he went by the nickname of "Commodore", but that he was usually called Tommy Atkins; remembers him until he was about six or seven years of age.

Mrs. Lucinda R. Riley (Rec., p. 2870):

Maiden name was Lucinda A. Schiller; was born and raised in Leavenworth, Kansas, in a house owned by her mother at 326 Choctaw Street, and they lived in the house until the spring of 1885, when a woman by the name of Lillie White took the house; thinks the month that they moved out was April, 1885.

Mrs. John Welch (Rec., p. 2877):

Has resided in Leavenworth, Kansas ever since she was a small child, and her father used to work at Crilley's barn and she carried his meals to him twice a day, and in doing so she passed Mrs. Letcher's house on Seneca Street and often saw a boy

called Tommy Atkins around that house; that he was dark skinned and had dark hair and dark eyes and looked very much like an Indian.

PHILLIP TUCKER (Rec., p. 2890):

Engaged in the livery business in Kansas City, Mo., and formerly lived in Leavenworth; resided in Leavenworth for thirty years and worked at the livery barns of Crilley and Cranston, Van Tyle and Geo. Waller; was working for Crilley and Cranston when they were burned out; worked in the block where Crilley's and Tyle's barns were for about eighteen years; knew Granny Letcher, who lived on Seneca Street, between Second and Third Streets; knew an Indian girl who went by the name of Indian Minnie; remembers seeing her around Granny Letcher's for a year or more; knew of her giving birth to a child at Granny Letcher's; afterwards saw her nursing the child on Mrs. Letcher's porch; saw her subsequently carrying a child around in her arms and remembers him after he grew up and got to playing about the yard and on the sidewalk. The boy was called Tommy and had a nickname, "Commodore", and was brown skinned, black haired and chunky; remembers him as a boy of about five or five and a half years old at the time of the burning of Crilley's barn in 1890.

Ina Massie McCormick (Rec., p. 2905):

Wife of Dr. John A. McCormick, who practiced medicine in Leavenworth for a great many years; remembers her husband telling her that he had attended an Indian girl at a colored woman's house.

Alexander Ford (Rec., p. 2913):

Born May 15, 1842; came to Leavenworth in 1875 or 1876 and worked for Dave Atchison about nine years; worked for him in 1885; was Atchison's foreman in hauling wood from the Missouri side of the river; when the weather was bad and the roads impassable, stayed around the wool yard and split wood and attended to the horses; knew an Indian girl generally called "Indian Minnie"; recollects the first time he saw her, when she came to Atchison's wood yard with a basket after chips and that she had a "papoose" baby with her that looked like an Indian; saw her two or three times around the wood yard and once at Mrs. Letcher's house.

William D. Ford (Rec., p. 2926):

Coal miner, 51 years of age; lives at Lockston, Mo.; lived in Leavenworth, Kansas, in 1885, and off and on worked at Dave Atchison's wood and coal yard; in the summer time was employed in the coal mines and worked around Atchison's in the fall and winter when the weather was cold; remembers a woman around Atchison's that they called "Indian

Minnie", and that she always had a baby in her arms. Was born in 1865, and thinks he was between twenty-one and twenty-two when he saw the woman and baby around the woodyard.

JOHN F. RODERICK (Rec., p. 2937):

Was born in 1839 and is employed in the Soldiers Home at Leavenworth; has charge of the trash wagon there; served three years and one month in the army during the civil war; came to Leavenworth in 1877 and left there in 1886; fixes the date by a cyclone that blew down the girls' school and killed seven or eight girls. Went to Kansas City, Mo., to live about July 5th or 6th, 1886; had a business arrangement with Crilley and Cranston's livery barn and organized a company under the name of Roderick, Crilley & Cranston who had a contract for hauling between the City of Leavenworth and Fort Leavenworth, which expired July 1, 1885. After the expiration of the contract went to Fort Riley in the teaming business for himself and from there moved to Kansas City; knew a girl called "Indian Minnie", and saw her for he first time at Fifth and Shawnee Streets waiting for a bus to go to Fort Leavenworth; saw her a number of times after that; knew the old fortune teller, Mollie Peters, who lived at the corner of Third and Seneca Streets; about the last of June or the first of July of the year that his contract between the city and the fort expired he went with

Mollie Peters to Granny Letcher's house and saw the woman called "Indian Minnie" lying on a bed with a new born baby by her side, and he took the baby in his arms and carried it across the street to Mollie Peters' house; corrects his statement as to the woman he saw with the baby being "Indian Minnie" instead of "Indian Mary."

A. L. Johnson (Rec., p. 2960):

Seventy-two years of age, a retired physician and surgeon residing at St. Helena, California; formerly lived at Leavenworth, Kansas, where he resided about eighteen years and lived there during the eighties. Knew a woman by the name of Mattie Edwards whom he attended at the birth of a girl; that Mrs. Edwards lived on Seneca Street, between Second and Third Streets; that on the second day after Mrs. Edward's confinement he called at the house to see her, and a woman came in and went out again; that Mrs. Edwards said, "You may have a case there." He did not learn the name of the woman and did not see her again until she came to his daughter's house in St. Helena, California, and that he identified her (Minnie Folk, nee Atkins) as the woman that he saw at the house on Seneca Street when he was attending Mrs. Edwards.

Dr. C. R. Carpenter (Rec., p. 2997):

Sixty years of age and practicing physician at San Diego, California, and practiced his profession

in Leavenworth, Kansas, for thirty years; was requested by a man by the name of Peterkin to attend a woman in confinement in Leavenworth in July, 1886; that Peterkin was a soldier stationed at Leavenworth, went with him to the house where the woman was and attended her at the birth of her child; expresses the opinion that she had previously given birth to a child. The remainder of his testimony is largely of an expert nature, particlarly cross examination.

MILTON WEBSTER (Rec., p.3030):

Fifty-one years of age and in the express business in Kansas City, Kansas; lived in Leavenworth in the eighties and knew an Indian girl called "Minnie." Remembers seeing her about 1885 or 1886 at Granny Letcher's on Seneca Street, between Second and Third Streets; remembers seeing her on the 30th day of May, 1885, when she was in a family way and about ready to go to bed; afterwards saw her with a baby boy some four or five weeks old; asked her whose child it was, and she said it was hers. Remembers the child until it was eleven or twelve months old crawling around; that he left Leavenworth in 1887 and never saw the child or the woman afterwards; that the child appeared to him to be part Indian; fixes the date of May 30, 1885, by the fact of that being Decoration Day and the year as being the time that Broaddus shot Jobson.

Adolf Lange (Rec., p. 3047):

A druggist and pharmacist, who has resided continuously in Leavenworth, Kansas, since April, 1866; was in the Civil war and mustered out May 2, 1865; when he first came to Leavenworth in 1866 was employed in the store he now owns; that he bought the store in 1880; in 1884 and 1885 lived over his store at the corner of Fourth and Shawnee Streets in Leavenworth; knew an Indian woman called "Indian Minnie" about that time; saw her very frequently in the neighborhood; knew the old fortune teller, Mollie Peters, and that Mollie Peters and Indian Minnie often came into his store; that in June, 1884, he left Leavenworth on a visit to his former home in Saxony; that he went to New York and sailed on the steamship "Servia," and while in Europe visited a number of continental cities and kept a memorandum book of his European trip from which he testified; he also made an offer to the Court of his receipted hotel bills and the passenger list of the steamer on which he sailed; that he returned to Leavenworth in the later part of September, 1884; and remembers seeing Indian Minnie in a pregnant condition in his store in 1885, in the late spring or summer after his return from Europe; fixes the time of the year by the fact that the weather was warm and his store door was open and the woman was thinly dressed and he could plainly see her physical condition. Recites an incident of two small pocket-books, one of which he

sold to Indian Minnie and the other he still retains. He also fixes the time that she was in his store by other details.

A. W. HOPKINS (Rec., p. 3067):

Witness is an intelligent negro, forty years of age, and is Grand Secretary of the Knights and Daughters of Tabor; testifies that he has been connected with this organization since 1883; that at the meeting of the Grand Temple and Tabernacle in Memphis, Tennessee, in 1884, he was the delegate from Leavenworth and acted in the capacity of outside sentinel at that convention; that the inside sentinel was a large Indian woman, mixed blood, big and tall, with whom he became acquainted and who questioned him about persons living in Leavenworth; asked him if he knew an Indian woman there named Minnie Atkins and he told her he did not; said her name was Jane Anderson and asked when he returned to Leavenworth to look up Minnie Atkins; that when he returned to Leavenworth he was ill for some time but after Christmas made some inquiries and ascertained that Minnie Atkins was at Granny Letcher's and that he went there to see her in the spring of 1885 and delivered the message that Jane Anderson had given him at Memphis. That he saw her twice at Granny Letcher's and both times she was sitting down and saw her again in the summer when she had a baby in her arms; that she was on the street with Granny Letcher; that there was a veil

over the baby's face, and he asked whose baby it was and she said it was hers; saw her again afterwards in the neighborhood of Fourth and Shawnee Streets when she had a baby by the hand.

W. P. GEMPEL (Rec., p. 3096):

Bookkeeper, Leavenworth Water Works Company; identifying witness of a contract for the installation of water at 215 Cherokee Street, made October 23, 1885.

MAX A. HARRIS (Rec., p. 3096):

Traveling salesman for a wholesale liquor house at Kansas City, Mo., lived in Leavenworth for a number of years and formerly ran a saloon at 215 Cherokee Street; when he leased the property it was in bad shape, no water had been installed, and he made a contract with the water works company to install the water in October, 1885.

LIZZY KAZEY (Rec., p. 3098):

Fifty-seven years of age, lived in Leavenworth since 1872; this witness is a negress and often went to the house of Granny Letcher when she lived on Cherokee Street and afterwards when she lived on Seneca Street, between Second and Third Streets; remembers seeing an Indian girl at the house on Seneca Street called Minnie Atkins—saw her there twice; unable to fix the time; that she had one child

that in her opinion was two years old and it was called Tommy Atkins.

FRANK HEIS (Rec., p. 3110)

Seventy years of age; lived in Leavenworth, Kansas, continuously since 1868 and has been engaged in the marble, stone and granite business since 1873; in the early eighties was in partnership with one F. S. Burdett, and they had a five year contract for stone cutting at the Lansing prison which expired in 1884; that about the time of the expiration of the contract he and his partner began negotiations for the Schiller property on Choctaw Street; that these negotiations continued with Mrs. Schiller until the spring of 1885; that the negotiations with Mrs. Schiller failed and Mrs. Schiller moved out of the house and that Lillie White moved in and that Lillie White stayed in the house from the early spring of 1885 until some time in 1886.

PATRICK DELANEY (Rec., p. 3117):

An Irish policeman and fireman and has served in the police and fire departments of both Leavenworth and Kansas City, Missouri; fifty-three years of age, and lived in Leavenworth all of his life until twelve years ago; now employed as night watchman at the Kansas City Stock Yards; was on the police force in Leavenworth in 1894, was then off for about two years, went back in 1896, and was on the force in 1896, 1897 and 1898; went

to the fire department in 1898 and was for three years Chief of the Leavenworth fire department. Knew a woman named Granny Letcher who lived on Seneca Street between Second and Third Streets, in Leavenworth, when he was on the police force in 1896 and 1897. Knew a boy around that neighborhood called Tommy Atkins who lived at Granny Letcher's and arrested him in either 1896 or 1897; that he was a tall, straight-haired boy, not fleshy, but a good sized boy, apparently about twelve years of age; very mischievous. That he arrested him on orders from the police chief and did not know what disposition was made of the charge against him; never knew a woman called "Indian Minnie," and knew nothing about the boy's parentage.

W. K. Cowling (Rec., p. 3131):

Fifty-seven years of age and resided at Leavenworth, Kansas, and a stone mason; worked for the firm of Burdett and Heis in the spring of 1885 on Choctaw Street; that next to Burdett and Heis' stone yard there was a house belonging to a Mrs. Schiller; that it was occupied as a sporting house by a woman named Lillie White, who moved into the house in the spring of 1885, about the time witness went to work for Burdett and Heis.

James M. Allan (Rec., p. 3139):

Born in Leavenworth, in 1852, and engaged most of his life in the railroad business as general agent of the Rock Island Railroad at Leavenworth; was superintendent and ticket agent at the Union Depot at Leavenworth in 1884 and 1885; knew a girl by the name of Indian Minnie in those days and saw her several times in a house run by Granny Letcher across the street from the Seneca House. Saw her with a baby in her arms two or three times at Granny Letcher's. The child, in his judgment, was about three or four months old. Does not definitely fix the year other than 1884 or 1885, but that it could not have been as late as 1886, as in that year he was not on the streets looking for passenger business as he had been in previous years and that he was on the road traveling most of the time.

Mattie E. Cone (Rec., p. 3145):

Was a resident of Leavenworth, Kansas, for fourteen years and resided on Seneca street in the old Seneca House in 1885; her name at that time was Edwards and on April 20, 1885, she had a daughter born to her named Grace Edwards, who, at the time of her deposition, was residing in St. Louis, Mo.; knew "Indian Minnie," and she waited on her four days just before the birth of her child, Grace Edwards, and was at that time in a pregnant condition. That thereafter, about the last of May or the

first of June, Indian Minnie had a child which was born at Grandmother Letcher's place; that she saw Indian Minnie and the baby several times during the five or six months after the child was born, did not know what became of Indian Minnie after that time; knew that Indian Minnie went back and forth between Leavenworth and the Fort.

RICHARD NICHOLS (Rec., p. 3254):

A negro, fifty-six years of age, and lives in Leavenworth, Kansas. This witness was called by the Government for the purpose of impeaching his deposition of October 7, 1914, in the case pending in the state court, but was offered by counsel for Minnie Atkins. The deposition contains no material evidence as to the facts in this case.

CHARLIE ANDERSON (Rec., p. 3273):

Fifty-seven years of age, resides in Leavenworth, Kansas; this witness was subpoenaed on behalf of the Government but his deposition was offered by counsel for Minnie Atkins; it was undoubtedly taken for the purpose of impeaching his testimony of October 7, 1914.

There is little in this testimony bearing upon the question at issue.

THERESA SWOBODA (Rec., p. 3286):

Assistant bookkeeper and stenographer and in

charge of the files of the Leavenworth Times; identifies copies of the issues of the Leavenworth Times of Wednesday, May 12, and of May 13th, 1886, introduced for the purpose of establishing the date of a cyclone and wind storm at Leavenworth in which thirty people were killed.

THOMAS HIGGINS (Rec., p. 3292):

Thirty-six years of age, a white man, born in Leavenworth, Kansas, in 1881, and lived there until he removed to Kansas City, Missouri, in 1905; went to work for McNally who ran a transfer line—went to work for him in 1896 or 1897—and worked for him off and on until about 1900; drove a one-horse delivery wagon for McNally until he was large enough to handle a team; knew a boy by the name of Thomas Atkins about eleven or twelve years of age who played in the alleys around Seneca and Third streets in Leavenworth at that time; that the boys called him "Texas Tommy" or something like that; does not remember seeing him after he left McNally's employ.

ALVA ADAMS (Rec., p. 3302):

Thirty-one years of age and resides at 2008 Bellevue Avenue, Kansas City, Mo., an intelligent well informed white man born in Leavenworth, Kansas, March 17, 1886, and resided there until 1898 or 1899; distinctly remembers Granny Letcher's place on Seneca street; between Second and

Third streets, and when a boy about ten years of age often played in that neighborhood; knew a boy with whom he often played by the name of Thomas Atkins and saw him for the last time about 1897 or 1898; witness was arrested about that time for a petty theft and served a short sentence in the county jail and then left Leavenworth. The boys in the neighborhood often played a game of war and referred to Tommy Atkins as "Indian Tommy" and he was also called "Trailer." The Government cross examination of this witness only tended to strengthen his direct examination, as his answers to questions of detail as to his former life were direct and convincing.

ELOF A. CRILLEY (Rec., p. 3319):

Was born in Leavenworth, Kansas, March 20, 1880, and lived there until 1889; was away about one year and then returned to Leavenworth; his father was Geo. Crilley, who ran the livery barn; identifies the Letcher house, yard and surrounding; knew a boy that lived there by the name of Tommy, who was about six or seven years old when he first knew him in 1891 or 1892; also identified Walter Banks and Jim Mayo and Sam Nash as boys who lived at Granny Letcher's.

GEORGE CRILLEY (Rec., p. 3332):

Lives at Leavenworth and has lived there since June, 1870, and had engaged in the livery business

most of the time. Started in business for himself July 24, 1878; March 15, 1880, went into business with Cranston and the business was conducted under the name of Crilley and Cranston for about twelve years; was also associated with a man named Roderick under the firm name of Roderick, Crilley and Cranston, who had a contract for hauling between Leavenworth and the Fort. The Crilley and Cranston barn was located during the eighties at 220-222 and 224 Seneca street, on the north side of the street; Granny Letcher lived right across the street in what was known as the Dotter property, which was a one time occupied by a woman who ran a sporting house, by the name of Lillie White. Granny Letcher moved into the house after Lillie White left. Granny Letcher moved into the house some time in 1885; witness is not positive of the exact time of the year; knew a girl named Indian Minnie about 1885 and often saw her around Granny Letchers's place; in July or August, 1885, or it may have been later in the year, saw Indian Minnie with a child, dressing and undressing it, o the back porch of Granny Letcher's house; often saw the boy as he was growing up and remembers him until he was six or seven years of age. Witness nicknamed him "Commodore"; fixed the date of the burning of the Crilley and Cranston livery barn as the morning of April 11th, 1890.

The cross examination of this witness, which occupied a great deal of time, was devoted largely to

when Lillie White moved into and out of the Dotter house.

DENNIS JONES (Rec., pp. 3372-3395-3434):

A negro lawyer, of Leavenworth, Kansas, sixty years of age, and has resided in Leavenworth since 1863. Was admitted to the practice of law in Kansas in 1892. From 1880 and up through the years 1885-86-87 was employed as a porter at the Continental hotel and as a special on the police force; was first employed on the police force as a special in 1884; was also employed as a special some time during the year 1885; knew Granny Letcher; knew her when she lived at 215 Cherokee street, and remembers when she moved from Cherokee street to the Dotter house on Seneca street, between Second and Third streets; knew the members of her family, her son, Jim Mayo, Sam Nash and Walter Banks; also remembers Indian Minnie and a boy called Tommy who was often around Granny Letcher's. This boy was enough Indian for a person observing to know that he was part Indian and part white; he had no characteristics or appearance of a negro; first remembers seeing Indian Minnie at Mrs. Letcher's on Cherokee street in the winter of 1884; knew her better in the spring of 1885 after Granny Letcher had moved from Cherokee street to Seneca street and saw her at Granny Letcher's in May, 1885, when she was in a family way, and afterwards heard that she gave birth to a

child at Granny Letcher's; did not see the child himself for several months, but then did see Indian Minnie with a child in her arms; remembers the child as it grew up, and when he last saw the boy he was twelve or thirteen years old—may not have been quite that old but was quite a chunky boy. Saw Indian Minnie numerous times until about 1886 or 1887, when he lost track of her; identifies Minnie Folk, the defendant in this case, as the woman he knew as Indian Minnie, in Leavenworth, in 1884 and 1885.

The cross examination of this witness consumed all of the court's attention for one day and was directed to his relation, during the past few years, with the Gypsy Oil Company, Sadie James, Chas. Page, Betty Mann and Frank Long.

During the examination of this witness defendants' Exhibits "B-7", "B-8" and "B-9" were introduced, being a contract between Dennis Jones and the Gypsy Oil Company and correspondence between Dennis Jones and officers of the Gypsy Company.

JOHN COUCH (Rec., p. 3480):

Knew Minnie Atkins when she came to Muskogee some time about 1895; became intimate with her and took a trip with her from Muskogee, Indian Territory, to Denver, Colorado, in 1897; went through Kansas City, and they were in the old

Union station at Kansas City for about two hours before taking a train to Denver; was with Minnie during the time they were in Kansas City and never saw Sadie James; that Minnie remained in the station and that witness was not out of her presence to exceed thirty minutes when he went across Union avenue to a barber shop. This trip was in August, 1897, and after reaching Denver he went with Minnie to Fort Logan where she stayed for some time.

F. B. Long (Rec., p. 3497):

Agent of the defendant, Chas. Page, and instrumental in securing the oil and gas lease from Minnie Folk, nee Atkins, in June, 1914. Testified in detail as to his activity in behalf of his principal, his visit to Minnie Folk at Seattle in 1914 and his connection with Betty Mann and Sadie James, his investigation of the Henry Carter claim and his efforts to secure reliable information in connection with the identity of the enrolled and allotted Thomas Atkins.

Edward C. Funk (Rec., p. 3653):

An employee in the office of the Superintendent of the Five Civilized Tribes; was called as a witness for the purpose of identifying the handwriting of certain notations on the Thomas Atkins census card.

J. C. KENNEDY (Rec., p. 3567):

An employee in the office of the Superintendent of the Five Civilized Tribes; called for the purpose of identifying the handwriting of certain notations on the Thomas Atkins census card.

W. H. ANGELL (Rec., p. 3659):

Employee in the office of the Superintendent to the Five Civilized Tribes; called as a witness for the purpose of identifying the letter press copy of a letter from the Commission to the Five Civilized Tribes transmitting to the Secretary of the Interior the partial roll of Creek Indians containing the name of Thomas Atkins.

(Note: It was admitted by counsel for the Government that the original letter, or judgment, of the Dawes Commission finding Thomas Atkins entitled to enrollment was signed by Tams Bixby as well as other members of the Dawes Commission.) (Rec., p. 3689.)

THOMAS E. KIRKBRIDE (Rec., p. 3661):

Introduced as a witness by the defendants Folk and Page to refute statements made by Betty Mann in reference to an alleged conspiracy.

D. M. HODGE (Rec., p. 3663):

Member of the Creek Council in 1895; testified as to proceedings of the Creek Council in the prep-

aration of the 1895 pay roll; also as to the Dawes Commission proceedings at Okmulgee in May, 1901.

R. A. Josey (Rec., p. 3666):

Formerly stockholder and officer of the Gem Oil Company, and interested with the defendant, Chas. Page, in the oil and gas lease of June, 1914, from the defendant, Minnie Folk; testified as to his relations with the defendant, Chas. Page, and transactions with F. B. Long in reference to the oil and gas lease.

Ben Couch (Rec., p. 3678):

Brother of the witness John Couch; first became acquainted with Minnie Atkins in 1894 or 1895; corroborative of the testimony of his brother, John Couch, as to when Minnie Atkins left Indian Territory.

Samuel W. Brown (Rec., p. 3682):

Town King of Euchee Town in 1895; testified as to being present at the 1895 payment and as to Minnie Atkins drawing for herself and three children and as to witness drawing the payment for Ed. Schrimpser and Nancy Atkins. Never heard of Nancy Atkins having a boy by the name of Tommy. On cross examination was interrogated as to his testimony in the state court case at Sapulpa in 1914 and as to payment to Minnie Atkins of the 1895 payment for E. Schrimpser and Nancy Atkins.

EDWARD C. HANFORD (Rec., p. 3026-3689-3737-3820):

One of the defendants, and counsel for the defendant, Minnie Folk nee Atkins. Had no personal knowledge of the facts in reference to the birth of a Thomas Atkins to either Minnie Atkins or Nancy Atkins; first became connected with the litigation in June, 1914, through Captain Alexander J. McNabb at Fort Lawton, Seattle; testified in detail as to incidents in connection with business transactions with the defendant, Minnie Folk, nee Atkins, and Page and Long. He was cross examined at great length, especially in connection with the visit of Frank L. Montgomery, Government agent, to Minnie Folk in December, 1914, and Minnie Folk's alleged confession.

J. H. WENDORFF (Rec., p. 3734-3736):

STANCE MEYERS (Rec., p. 3735-3769):

O. B. TAYLOR, JR. (Rec., p. 3736-3770):

These three witnesses were residents of Leavenworth, Kansas, being the District Judge of Leavenworth County, member of the State Board of Control of Kansas, and cashier of the First National Bank of Leavenworth, respectively. They testified to having been personally well acquainted with Dennis Jones, a Leavenworth attorney, for from twenty-five to thirty years, and that he bore a good reputation for truth and veracity.

ALEXANDER J. MCNABB, JR. (Rec., p. 3832):

Captain in the United States Army, stationed at Fort Lawton, Seattle, Washington, and trustee of the defendant, Minnie Folk, nee Atkins, under the trust deed of June, 1914. The testimony of this witness is confined to his transactions with parties desiring to secure a deed or lease from Minnie Folk and to the various visits of parties to him and Mrs. Folk.

CATHERINE SISK MCCOMB (Rec., p. 3852):

Wife of Lieutenant J. G. McComb of the United States Army stationed at Fort Lawton, Seattle, Washington; testified that the defendant Minnie Folk was at various times in her employ as a domestic at Fort Lawton; that after parties first began coming to Minnie Folk to secure a deed or lease from her in 1914, she (Minnie Folk) came to witness for advice and told witness of her previous life and that Minnie Folk confided to her in these conversations that she had been the mother of five children before her marriage to her husband, Harry B. Folk, and that her first child was named Tommy and was born at Leavenworth, Kansas.

EUGENOLA HUNT (Rec., p. 3865):

Stenographer in the law office of Dennis Jones, at Leavenworth; testified as to conversation had between Dennis Jones, Sadie James and

Betty Mann at Dennis Jones' office in the months of March, April and May, 1914.

GRANT FOREMAN (Rec., p. 3870):

Attorney at law, Muskogee, Oklahoma; former law partner of Judge John R. Thomas in 1903, 1904 and 1905. Offered as a witness by the defendants, Folk and Page, for the purpose of identifying the Thomas Atkikns referred to by Judge John R. Thomas as being a relative of Cheney Trent, as noted upon the deed delivery record in the office of the Principal Chief of the Creek Nation.

CHAS. PAGE (Rec., pp. 3876-3897):

One of the defendants in this case and the present owner and holder of the oil and gas mining lease of June, 1914, from the defendant, Minnie Folk. Testified as to his interest in securing the lease and as to development of the property and his good faith; that he had delegated most of the details in connecction with the lease to his agent, F. B. Long; also testified as to his former joint ownership of the lease with R. A. Josey and his purchase of Mr. Josey's interest. On cross examination was interrogated as to his transaction with Sadie James and Betty Mann.

MINNIE FOLK (NEE ATKINS) (Rec., p. 3910):

Principal defendant in this action; testified that she was born on Elk Creek in the Creek Nation,

Indian Territory, and that she is the daughter of Thomas Atkins and Mary Jane Atkins; that she had one brother, Lee Atkins, who is now dead, and a sister, Nancy Atkins, who is now living: that she went to school at Tallahassee mission, north of Muskogee, and that she was taken from there to the Carlisle School in Pennsylvania with Betty Crowell (now Betty Mann) and a number of other Indians; that she was sent from Carlisle to Leavenworth, Kansas, as a domestic in the household of a banker named George H. Hyde; that she was never in a pregnant condition before going to Leavenworth; that while working at Hydes' she became intimate with a man named Lee who was the coachman of one of the officers at Fort Leavenworth; that while employed at the Hydes' she became pregnant and that Lee got her a place near the Fort in the home of Herbert Grodevant; that she worked at the Grodevant's as long as she could, endeavoring to hide her condition, and went to Granny Letcher's house in order to have the child; that she was sick at Granny Letcher's house about two or three weeks; that the child was born to her there; that she named the child Tommy Atkins after her father and that as soon as she was able she went back to the Grodevant house and resumed her work as a domestic; that it was her custom to come down from the Fort to the City of Leavenworth every night and go to Granny Letcher's to look after her child; that she made an arrangement

with Granny Letcher to give all she possibly could afford to the support of the child, but that Granny Letcher advised her that she would take care of it anyhow. Witness then detailed her subsequent life —the birth of Robert Lee Peterbin in Leavenworth; the birth of Alice Peterbin; the birth of Charley Harrison and the birth of Harvey Harrison; testified that these were all the children she ever had and that Tommy Atkins, born at Granny Letcher's house was the first child. She testified as to being present at the 1895 payment at Okmulgee in September of that year; that when she went to the paymaster's table and "There was some man sitting there, but I don't know who he was. I says, 'let me see the books,' and he just shoved the book over to me and I looked and there was five of us on the book to draw and that was myself and Tommy and Harvey and Charley and Alice. 'Well,' I say, 'Alice is dead. I couldn't draw for her.' Well, he give me the money for the four of us. That was Charley, Harvey, myself and Thomas. It was about $57.00 I think."

She further testified as to her return to Fort Logan after the 1895 payment and as to John Couch going with her and as to their remaining in Kansas City but a few hours.

The remainder of her direct examination was devoted to a recital of the various visits of Government officers, detectives and parties seeking to secure a deed or lease from her to the land in con-

troversy; of her desire to withhold from her husband the history of her past life and of the indignities and humiliations to which she was subjected.

She was cross-examined at great length and particularly as to her conflicting statements made at previous times in reference to the birth of her children and, for the purpose of impeaching her testimony; counsel for the government and for the defendant Nancy Atkins examined her at length and introduced in evidence her testimony given at Sapulpa in July, 1914; her deposition at Rice and Lyons' office in Tulsa in October, 1914, a sworn statement made by her in response to interrogatories at Kansas City, Missouri, in September, 1914; her testimony at the receivership hearing at Muskogee on March 3d, 1915, and her deposition at Seattle, Washington, in January, 1916. She was also further cross-examined in connection with the alleged confession made by her to Frank L. Montgomery, the Government agent, at Seattle, Washington, December 17, 1914.

George Kinsey (Rec., p. 4158):

An employe of the defendant, Chas. Page, and in charge of operations upon the property in controversy since November, 1914. Testified as to the construction of tankage and expenditures in connection with the development of the lease.

HARRY B. FOLK (Rec., p. 4163):

Husband of the defendant, Minnie Folk, married to her March 31st, 1907; introduced on behalf of the defendants, Folk and Page, as a witness to conversations had between Minnie Folk and various parties in his presence. Upon the complainant objecting to his testifying in behalf of his wife, he was excused.

E. O. CURTIS (Rec., p.4169):

Auditor in the employ of the defendant Chas. Page; testified as to the expenditures in connection with the development of the leased property and the marketing of the oil produced therefrom. He also testified from the books and records of his employer as to detailed expenditures in connection with the lease. (During this witness' testimony, defendants' Exhibits "B-21," check for $500.00 from the Gem Oil Company to Minnie Folk. "B-22," financial statements of the Atkins lease to December 17, 1914, and to January 18, 1915, were introduced).

MIKE STANTON (Rec., p. 4175):

This was a witness produced on behalf of the complainant but his deposition was offered in evidence by counsel for the defendants Folk and Page. He testified that he lived in and around Leavenworth, Kansas, for fifty-seven years and moved from town out to the fort in 1869 or 1870 and be-

fore moving there knew two women around Leavenworth, one called "Indian Mary" and the other called "Indian Minnie"; that after he moved to the reservation in 1870 he saw Indian Minnie around the Fort and understood she was employed there; that when he first became acquainted with Indian Minnie, 1868, she was 17 or 18 years old.

THOMAS HUMPHREY (Rec., p. 4458):

Formerly an employe in the office of the Superintendent to the Five Civilized Tribes; identified defendants' Exhibit "B-25" as a certified copy of the Thomas Atkins census card issued by him April 2, 1912, as a correct copy of the original then on file.

ROBERT L. BAUGH (Rec., p. 4553):

Went to work in the office of the Superintendent to the Five Civilized Tribes October 19th, 1913, and was employed there until some time in the early spring of 1914; identified the lead pencil notations up on the face of the Thomas Atkins census card in reference to the letter of May 9, 1905, as being in his handwriting and placed thereon subsequent to October 19, 1913.

C. LIPSCOMB (Rec., p. 4612):

Formerly engaged in the banking business at Bixby, Oklahoma; resident of Tulsa, Oklahoma; introduced by the defendants, Minnie Folk and

Chas. Page as a witness in rebuttal of the testimony of the Government's witness, C. B. Malcom. Testified that Malcom told him a few days before Malcom testified at Muskogee that he had a chance to make $500.00 as a witness in the Atkins case but that he (Malcom) "thought it was too risky."

F. K. Taylor (Rec., p. 4616):

Several terms police judge of Leavenworth, Kansas; testified as to custom of police department of Leavenworth in "picking up" parties on request of state or county officials.

William A. Doidge (Rec., p. 4620):

Captain of police, Leavenworth, Kansas, and been employed on the police force since February 4, 1897; well acquainted with Patrick Delaney when he was on the police force; testified as to custom of police department in making entries for arrests made at the request of county or state officers; identified defendants' Exhibit "B-27" as a picture of Tommy York.

Lee Bond (Rec., pp. 4389, 4632):

Of counsel for the defendant Charles Page; practicing attorney and United States Commissioner, Leavenworth, Kansas; formerly police judge, Leavenworth, Kansas. Identified the witness Doidge as a member of the Leavenworth police force when witness was police judge.

DR. F. B. FITE (Rec., p. 4647):

Practicing physician of Muskogee, Oklahoma; qualified as an expert witness and testified that condition found in the defendant, Minnie Folk, at the time of the delivery of the Peterkin baby in July, 1886, as testified to by Dr. C. R. Carpenter, could have been caused by and clearly indicated the birth of a previous child.

The Evidence Against Minnie Atkins

RICHARD SHANAFELT (Rec., pp. 151-176):

Clerk in the Land Division in the office of the Superintendent to the Five Civilized Tribes; identified Government's Exhibits "A-1" to "A-23," records in reference to enrollment of and allotment to Thomas Atkins, Creek Indian Roll No. 7913; issuance of certificate of allotment deeds and correspondence relative to Thomas Atkins. During the testimony of this witness Government's Exhibits "A-24" to "A-30" were also introduced, consisting of correspondence between the Creek National Attorney, the Superintendent to the Five Civilized Tribes and the Commissioner of Indian Affairs relative to proceedings to cancel the enrollment and allotment of Thomas Atkins, action taken by the Department of the Interior in connection with the cancellation of the enrollment and

allotment of Thomas Atkins, and copies of the 1890 and 1895 Creek Rolls in reference to the tribal enrollment of Thomas Atkins.

J. F. Bruff (Rec., p. 173):

Testified as to search in office of Superintendent to Five Civilized Tribes for deeds or patents to Thomas Atkins.

R. C. Allen (Rec., pp. 177-442-4640):

Creek National Attorney; testified in reference to discovery of deeds to Thomas Atkins and correspondence with Interior Department.

W. H. Angell (Rec., p. 178):

Clerk in charge of the allotment records in the office of the Superintendent of the Five Civilized Tribes; testified in reference to the withholding of delivery of deeds to Thomas Atkins and as to what constituted "hold up" records.

P. B. Hopkins (Rec., p. 182- -recalled p. 213):

Chief Clerk, Commission to the Five Civilized Tribes, fall of 1897 until spring 1903. Testified in reference to the procedure of the Commission to the Five Civilized Tribes, particularly concerning the enrollment work at Okmulgee in May, 1901. During the examination of this witness Government's Exhibit "A-3i," census card of Charley and Harvey Harrison, the two youngest children of Minnie Folk (nee Atkins), was introduced.

SAMUEL W. BROWN (Rec., p. 214):

Euchee Indian, Town King of Euchee Town in 1895. Testified as to manner of preparing the rolls of Euchee Town in 1890 and 1895. Knew Minnie Atkins and that John Davis, in March, 1895, gave to witness, as Town King of Euchee Town, the names of Ed. Schrimsher, Minnie Atkins, Charles Atkins, Susan Atkins, Thomas Atkins, Mary Atkins and Nancy Atkins, as members of Euchee Town entitled to participate in the 1895 payment. During the testimony of this witness the original memorandum book of the witness containing the above names was offered by the defendants Folk, et al., as Exhibit "B-1."

NOAH GREGORY (Rec., p. 233):

Euchee Indian, Town King of Euchee Town in 1890; testified as to the preparation of the 1890 Creek roll and as to proceedings of Dawes Commission at Okmulgee in May, 1901.

JOHN G. LEEPER (Rec., pp. 253-258):

Employe of Dawes Commission in May, 1901; testified as to procedure of enrollment of Creek citizens, and particularly in connection with sessions of the Commission at Okmulgee in May, 1901.

TAMS BIXBY (Rec., pp. 266-4645):

Chairman of the Dawes Commission and subsequently Commissioner to the Five Civilized

Tribes May 22, 1897, to July 1, 1907. Detailed manner of procuring tribal rolls from Creek Tribal authorities; procedure of Dawes Commission in reference to enrollment of Creek citizens and manner of enrolling "unaccounted for" Creeks at Okmulgee in May, 1901. At the conclusion of this witness' testimony-in-chief, Government's Exhibits "A-33" to "A-57," inclusive, were introduced, consisting of the records of the Dawes Commission relative to the enrollment of Charley and Harvey Harrison; power of attorney from Minnie Harrison to Thomas Holden, incomplete census card of Minnie Harris, proceedings in reference to the application for enrollment of Minnie Atkins, census card of Nancy Atkins, application of Nancy Atkins for an allotment, and correspondence between Nancy Atkins and the Dawes Commission.

EDWARD MERRICK (Rec., p. 3451):

Law clerk in the employ of the office of the Superintendent to the Five Civilized Tribes; employed by Dawes Commission March 4, 1901; been continuously in the employ of the Dawes Commission and its successors since that date with the exception of a few months in 1909 and 1910. Was enrolling clerk who listed the name of Thomas Atkins on the census card (Government's Exhibit "A-1") at Okmulgee on May 23, 1901. Testified as to the procedure of the Dawes Commission and incidents in connection with the placing of the name of

Thomas Atkins on the census card at Okmulgee and his subsequent enrollment by the Dawes Commission and approval by the Secretary of the Interior; that he procured the information and made entry on the census card that Minnie Atkins was the mother of Thomas Atkins from the testimony or information secured either by him or some member or employee of the Commission extraneous of the Creek Tribal rolls.

On cross-examination by Mr. Stuart, of counsel for Page, this witness testified as follows:

"Q. This card lists Thomas Atkins here as the son of Minnie Atkins, don't it?

A. Yes, sir.

Q. Minnie Atkins, the census card listed him as Thomas Atkins, age, parentage, mother, Minnie Atkins?

A. Minnie Atkins, 1895, Euchee.

Q. Now, at the time you wrote out that card as Thomas Atkins and mother Minnie Atkins of the Euchee tribe, you intended to enroll Thomas Atkins the son of Minnie Atkins, didn't you?

MR. HILL: We object.

THE COURT: He may answer.

Q. You intended to enroll Tommy as the son of Minnie Atkins, didn't you, as it appears there?

A. Well, as it appears, Minnie Atkins being

given as the mother, but primarily the Tommy Atkins is the one that appears on the Euchee Roll No. 213.

Q. I understand, but you put Thomas Atkins' name on there?

A. Yes, sir.

Q. And you put Minnie Atkins as the mother of Tommy?

A. That is the information given.

Q. From that information you intended to put Thomas Atkins up to the Dawes Commission as the son of Minnie?

A. That was the conclusion we arrived at from the information the Commission had, that Thomas Atkins was the son of Minnie."

ALICE M. ROBERTSON (Rec., p. 290; recalled p. 298):

Came to Tallahassee mission, an Indian school north of Muskogee, in March, 1879, and found the defendant, Minnie Folk, nee Atkins, a pupil in the school; that she was an over-grown girl who might have been anywhere from fourteen to twenty years of age; that Minnie Atkins, in company with some twenty-five other students, were transferred in January, 1881, from Tallahasssee mission to Carlisle Indian school, Carlisle, Pennsylvania; that the witness went with Minnie Atkins to Carlisle and that witness remained there until November 15, 1882, and that she was in daily contact with Minnie

Atkins at Carlisle until witness left there and that she was under strict supervision at that time; witness again saw Minnie Atkins in Muskogee in 1895; saw her again at Fort Lawton, near Seattle, Washington, in 1914. This witness identified Minnie Folk as the Minnie Atkins who was at Tallahassee mission in 1879 and 1880, at Carlisle Indian school in 1881 and 1882, who visited her in Muskogee, Indian Territory, in 1895, and as the person she interviewed in Seattle, Washington, in July, 1914, at the solicitation of the Gypsy Oil Company.

THOMAS W. GREEN (Rec., p. 313):

This witness was introduced by the Government and testified as to the physical characteristics of the land in controversy and as to the possession thereof since January 25, 1913. During this witness' testimony Government's Exhibits "A-58" to "A-77," inclusive, being certified copies of instruments of record in Creek County, Oklahoma, sought to be cancelled by the Government's bill, were offered by the complainant.

NELLIE ROBERTSON DENNY (Rec., p. 328):

Employe at Carlisle Indian school, Carlisle, Pennsylvania, identified records of that institution showing entrance of Minnie Atkins into Carlisle, January 21, 1881; her discharge from that institution, July 8, 1884. Also identified post-card from

George H. Hyde postmarked Leavenworth, Kansas, July 12, 1884, advising the Superintendent of Carlisle Indian school of the arrival of Minnie Atkins in Leavenworth, Kansas, July 11, 1884. Also identified letter of March 1, 1913, from Micco Harjo, addressed to the Superintendent at Carlisle school, in reference to Minnie Atkins.

WILL H. MILLER (Rec., p. 338):

Financial clerk at Carlisle Indian school, identified records from which Nellie Robertson Denny testified.

LAURA E. HYDE (Rec., p. 341):

Wife of George H. Hyde, cashier of the German bank of Leavenworth, Kansas, in 1884 and 1885; witness now living at Pittsfield, Massachusetts, and sixty-eight years of age; she testified that Minnie Atkins was sent to her home in Leavenworth by her husband's sister who was a teacher in Carlisle Indian school, 1884; that Minnie Atkins came to work for her in the summer of 1884 as a domestic and was in her employ a few months; that at the time she appeared to be a well developed woman of about eighteen years; that while she was in the witness' employ witness' children had noticed a soldier coming up behind their fence and that he would dodge away when the children saw him; that at no time while Minnie Atkins was in her employ did she appear to be in a pregnant condition and

that witness regarded her as a good girl. On cross-examination witness' attention was called to an item in the issue of the Leavenworth Times of July 18, 1884, in reference to her having gone to Yankton, Dakota, on a visit; that she remembered the trip and that she was in Dakota for some time, especially during the hot weather; she specifically testified:

"Q. Did you ever hear of her having given birth to any children?

A. Yes, I have heard.

Q. What did you hear, Mrs. Hyde, about Minnie giving birth?

A. Yes, I heard she had had a child and that she was a very unnatural mother—she did not love it."

CLAUDIUS A. HAMILTON (Rec., p. 347):

A resident of Leavenworth, Kansas, from 1883 to 1889; married October 2, 1883, to Mary Spain, and resided after their marriage at 922 Kiowa street; knew there was an Indian woman around Leavenworth before his marriage whose name was Minnie Atkins; first became acquainted with her the year following his marriage, some time in 1884; that she came to see witness' wife who told him she was an Indian girl from Carlisle and that she was working for Mrs. Hyde, the banker's wife; that witness understood she worked for the Hydes about six months and that she left there and went

to work at Fort Leavenworth; that Herb Goodwout told witness that Minnie Aikins was working for him; that after Minnie left the Hydes' witness saw her frequently at his home; that he noticed Minnie being in a pregnant condition and took exception to her coming to his home; that she discontinued her visits until her trouble had passed away and that she then resumed her visits and brought a man by the name of Petrokin to witness' home and introduced him as her husband and that afterwards Minnie and Petrokin visited his home; that witness understood that when Petrokin left Fort Leavenworth with the 24th Infantry, Minnie went with him and witness later saw them when they were living together at Fort Logan, Colorado; that witness never saw Minnie pregnant but once during the time that she lived in Leavenworth. On cross-examination witness testified that Minnie did not show any state of pregnancy until after she left the Hydes but was unable to state the length of time; that he learned of Minnie working for Herbert Goodwout when he and Goodwout were employed in the construction of Fort McKenzie in Wyoming in 1901. He was specifically asked:

"Q. * * * About how long was it from the first time that you saw Minnie at Leavenworth until the time that you last saw her before leaving for Fort Logan?

A. I first saw her in the fall of eighty-four—eighty-four, and I think the last time, to

the best of my knowledge and belief, I seen her in eighty-seven."

MARY SPAIN HAMILTON (Rec., p. 360):

The wife of Claudius A. Hamilton, was the superintendent of the laundry at Carlisle school before her marriage to Hamilton October 2, 1883, and knew the defendant Minnie Atkins while she was a pupil at Carlisle; that witness left Carlisle some time before her marriage in 1883. Witness saw Minnie Atkins two or three times in Leavenworth while she was working for the Hydes. That she left the Hydes and went to work at Fort Leavenworth and came to witness at that time and borrowed a dollar from her for which she left a small pin. That while she was employed at the Hydes' she showed no evidence of being in a family way but that she did notice her being pregnant after she moved to the Fort; that she is uncertain as to the time but that it was within two years after she left the Hydes; that when this condition was apparent witness' husband remonstrated about Minnie coming to the house; that Minnie stayed away for a while until she was in a normal condition and she then brought a man by the name of Peterkin to witness' house whom she introduced as her husband, that she afterward saw Minnie at Fort Logan, Colorado, and knew of her having a baby there by Peterkin, named "Mabel," that died, and two children (boys) by a butcher named Harrison. On cross-examination witness admitted she noticed

Minnie's condition some time before her husband's suspicions were aroused. That she was unable to state how long after Minnie went to work at the Fort she was in this condition, but it was in a period of about two years. Witness was unable to fix with accuracy the time she saw Minnie pregnant after she came to her house and borrowed a dollar.

During the examination of this witness the pin left by Minnie with the witness was introduced as Government's Exhibit "A-78."

JULIA GRODEVANT FOY (Rec., p. 382):

Resident of Sheridan, Wyoming, and is the daughter of Herbert D. Grodevant who died November 1, 1908. Witness lived with her parents in Leavenworth, Kansas, and personally knew of her father's methodical habits; that he kept a record of daily expenditures in small notebooks; identified entries in her father's handwriting in one of these books covering the period from October 1, 1884, to October 1, 1885.

(The Grodevant book was introduced during the witness' deposition as Government's exhibit 1 to her deposition. At the conclusion of this witness' testimony, Government's exhibit "A-79" to "A-81," inclusive, a plat of the Grodevant house and the military prison at Fort Leavenworth, a photograph of the Grodevant house at Fort Leavenworth, showing the kitchen, were introduced.)

FRANK J. GRODEVANT (Rec., pp. 388-397):

A brother of Herbert D. Grodevant and lived with him from February 18, 1884, until November, 1887; testified that in 1884 and 1885 his brother was living back of the military prison at Fort Leavenworth; that he became acquainted with an Indian woman named Minnie Atkins who first went to work for his brother in 1884; witness fixes this date by reference to the account book of Herbert D. Grodevant which he identified and also identified the handwriting as that of his deceased brother. That Minnie Atkins was employed by his brother as a domestic, washed and did general housework; that to witness' knowledge Minnie Atkins never gave birth to any child while she was in his brother's employ and that during that time she did not have the appearance of being in a family way; that after she left the employ of his brother she went to work for the Staffords and that he never saw her in a pregnant condition while there.

On cross-examination witness admitted that he was a single man, living with his brother—worked in town and would leave early in the morning and come home late in the evening; that he never paid any particular attention to the domestics employed by his brother; that he never had any occasion to notice Minnie Atkins; that she might have been away from his brother's house two or three weeks

and that witness would not have had occasion to notice it; that he remembered a white girl named Maggie Curry working for his brother at different times.

MARGARET NORTON (Rec., p. 407):

Daughter of Mrs. Margaret Diffley, or Mrs. Charles Woods; testified that she first became acquainted with Minnie Atkins when she was working at Grodevants; afterwards knew of her working for the Staffords and that Minnie came to her mother's house to live in 1886 and she gave her name as Minnie Peterkin; that there was a man living with her at that time as her husband under the name of Charles Peterkin and that in the latter part of the Month of July, 1886, Minnie Peterkin gave birth to a child named Robert Lee Peterkin; that this child was born at her mother's house, 815 North Eighth Street, Leavenworth, and only lived from four to six weeks; that she never knew of Minnie Peterkin having any former child.

CHARLES PETERKIN (Rec., p. 420):

Retired soldier, U. S. Army, fifty-six years old; was in the army from April 2, 1881, to April 21, 1908, was with Company E, of the 18th Infantry, when he went to Fort Leavenworth until the fall of 1887; first saw Minnie Atkins in 1885 when she was working at the Fort. Didn't know her intimately until she began working for Stafford;

met her and became intimate with her in January, 1886; knew that before he became intimate with her she had been living with a private of the 18th Infantry by the name of Wm. D. (Patrick) Oliver; discovered soon after he became acquainted with her that she was three or four months in a family way; continued to live in Leavenworth with Minnie Atkins until the fall of 1887 when he was transferred to Fort Logan, Colorado; that Minnie came to Fort Logan in the spring of 1888 and continued to live with him until the fall of 1889; that he never heard of Minnie having any child prior to the birth of Robert Lee Peterkin, in July or August, 1886; that her second child, Mabel Peterkin, was born at Fort Logan, Colorado, in the summer of 1888.

On cross-examination witness testified that Robert Lee Peterkin was born at Mrs. Woods' house on North Eighth Street, in Leavenworth, and that Dr. Carpenter was the attending physician at the birth of this child and that Minnie had been living at the Woods' house five or six weeks prior thereto. On redirect examination testified that he never heard of such a person as Granny Letcher nor ever knew Minnie being a visitor to the home of any negroes in Leavenworth.

JOHN P. HESSE (Rec., p. 441):

Chief of Division in Adjutant General's office, Washington, D. C.; fixes, from Government rec-

ords, date of discharge of Wm. D. Oliver from Company E, 18th Infantry, Fort Leavenworth, as December 18, 1885.

J. L. Bruff (Rec., p 442):

Testified that a search of the records of the Pension Office, at Washington, D. C., disclosed an application for a pension by the widow of Wm. D. Oliver.

Mrs. John (Cornelia G.) Stafford (Rec., p. 444):

Wife of Major John Stafford, retired, U. S. Army; married to Lieut. John Stafford July 8, 1885; lived with her husband at Fort Leavenworth in 1885 and 1886; first became acquainted with Minnie Atkins in September or October, 1885, when Minnie began working for her as a domestic and was continued in her employ until the following June when she left on account of the prospective birth of a child. Never knew or heard of her (Minnie) having a child prior to her employment by witness.

On cross-examination testified that she was not interested in Minnie at the time and that Minnie was away from the house a great deal of the time.

Major John Stafford (Rec., p. 450):

Retired U. S. Army officer, husband of Cornelia G. Stafford, and corroborated her testimony as to

employment of Minnie Atkins in September or October, 1885.

MARY CATHERINE ALLEN (Rec., p. 462):

Forty-eight years old and a resident of Leavenworth, Kansas. Daughter of Mrs. Charles Woods; had been living in Jackson County, Kansas, some fifteen or sixteen years prior to her return to Leavenworth on August 3, 1886, when she went to her mother's home at the corner of Eighth and Kickapoo Streets, and found Minnie Atkins there with a baby about four days old; that this baby was named Robert Lee Peterkin and died about two weeks after she first saw it; that a colored woman washed, dressed and prepared the baby for burial and went with Minnie in a hack to the cemetery.

FATHER BERNARD STEPHEN KELLEY (Rec., p. 473):

Parish priest, Leavenworth, Kansas, fixed the date of birth of Robert Lee Peterkin as July 31, 1886, and date of baptism as August 15, 1886, from the parish records.

J. J. O'DONNELL (Rec., p. 476):

Engaged in the undertaking business in Leavenworth in 1886; fixed August 16, 1886, as the date of furnishing coffin for Robert Lee Peterkin.

A. L. SCHOTT (Rec., p. 478):

Superintendent Mt. Muncie Cemetery, Leavenworth, Kansas, 1886. Fixed date of burial of Robert Lee Peterkin as August 16, 1886, from cemetery records.

SISTER MARY GERTRUDE (Rec., p. 480):

Secretary, St. John's hospital, Leavenworth, Kansas; fixed October 7, 1886, as date of entrance of Minnie Peterkin (Atkins) as a patient at St. John's hospital.

ELMO E. MATTHEWS (Rec., p. 483):

Sergeant, Hospital Corps, Fort Logan, Colorado, fixed August 4, 1888, as date of birth of Nancy Peterkin, from hospital records.

EDWARD L. BATTERSON (Rec., pp. 487-492):

Quartermaster Sergeant, U. S. Army, Fort Logan, Colorado; fixed date of death of Mabel (Nancy) Peterkin as June 28, 1889, from post records.

GEORGE F. CAIN (Rec., p. 394):

Retired soldier, U. S. Army; corroborative of Batterson's testimony as to date of death of Mabel Peterkin.

MARY LAND (Rec., p. 496):

Resident of Fort Logan, Colorado; knew Minnie Peterkin (Atkins) at Fort Logan, Colorado; knew her having three children, two boys and a girl; that she lived with a butcher by the name of Harrison at Logantown; never knew of Minnie having a child named Thomas Atkins.

JAMES O'CONNOR (Rec., p. 499):

Retired Commissary Sergeant, U. S. Army, stationed at Fort Logan, Colorado, March 19, 1889, to December 20, 1890; in the spring of 1889 became acquainted with an Indian woman by the name of Minnie, who was living with two men at Sheridan when he knew her; one named Cunningham and the other named Harrison; knew of her having one child at Fort Logan and saw two children running around back of Harrison's butcher shop; never heard of Thomas Atkins.

MARY JENSEN (Rec., p. 506):

Fifty-seven years of age, resident of Sheridan (Logantown), Colorado; first knew Minnie Peterkin (Atkins) when she came to Fort Logan in the latter part of 1887 or early part of 1888; knew of the birth of Mabel Peterkin and her death in 1889, when she was about a year old; that Minnie Peterkin had two boys born after Mabel Peterkin when she was living with a butcher by the name of Harrison.

SADIE JAMES (Rec., p. 510):

The deposition of this witness covers 542 pages of the record and occupied eight days of the time of the Court's examiner at Kansas City. She testified that she was forty-six years of age; became acquainted with Minnie Atkins in Leavenworth on July 14, 1884, and knew her in and around Leavenworth until she (Minnie) left there in the fall of 1886 or spring of 1887, and never knew of her having a child named Thomas Atkins. These are the only concrete facts in reference to the birth and existence of Thomas Atkins that the witness testified to. The remainder of her deposition is in reference to her various transactions with parties interested in securing title to the land in controversy. She made a so-called confession to a Government officer, on the guaranty of immunity from prosecution, that she was a party to a conspiracy to probe the birth and existence of a Thomas Atkins, the son of Minnie Atkins. She is a negress; she admits to living a life of dissolution and crime; that she has always been a crook and would do anything for money.

SARAH E. (Betty) MANN (Rec., p. 1052):

Creek Indian, about fifty years of age, and went to school with Minnie Atkins at Tallahassee, and was one of the pupils that went with Minnie Atkins to Carlisle in 1881. Had no personal knowledge of Minnie Atkins from the time Minnie left Carlisle

in 1884 until witness saw her in Seattle, Washington, in June, 1914. Identified Minnie Folk, nee Atkins, the defendant in this case, as the same Minnie Atkins that she knew at Tallahassee, Indian Territory, and Carlisle, Pennsylvania.

The testimony of this witness is mainly directed to transactions in connection with the activity of the litigants in this case, and she was introduced as a witness by the Government in support of the fabrication theory. She admits to duplicity in dealings with the parties she assumed to represent and confesses to numerous criminal and shady transactions to which she had been a party.

J. B. White (Rec., p. 1104):

One of the defendants in this action who was instrumental in procuring the first lease from the defendant, Nancy Atkins, offered as a witness by the Government to establish the testimony and appearance of the defendant, Minnie Folk, Sapulpa, in July, 1914.

William A. Cranston (Rec., p. 1110):

Engaged in the livery business at Leavenworth, Kansas, and fixed September 12, 1914, from his books as the date F. B. Long, agent of the defendant, Chas. Page, hired a horse and buggy at his barn.

O. GIACOMINI (Rec., p. 1113):

Proprietor of National Hotel, Leavenworth, Kansas; testified from register of hotel that F. B. Long was a guest of the hotel August 21st and 23rd, 1914.

MARTHA JONES (Rec., p. 1121):

Negress, residing at 309 Cherokee Street, Leavenworth, Kansas; testified as to Sadie James coming to her house with Irene Vinson in August, 1914, and Rube Smith and F. B. Long coming to see her there.

IRENE VINSON (Rec., p. 1124):

Twenty-two years old; negress; resident of Leavenworth, Kansas; testified in reference to going to Martha Jones' house with Sadie James in August, 1914.

CLARA KIRK (Rec., pp. 1128-1136):

Resident of Portland, Oregon; has known defendant, Minnie Folk (nee Atkins), eleven years; first became acquainted with her in Vancouver, Washington; testified that between July 12th and 15th, 1914, she went to see Minnie Folk at Seattle at the solicitation of Hugh Bartlett and Sadie James; detailed occurrences on the occasion of her visit to Minnie Folk at Seattle. Witness had no personal knowledge of the defendant, Minnie Atkins, prior to meeting her in Vancouver.

DENNIS JONES (Rec., p.1160):

Deposition of Dennis Jones, taken October 13, 1914, on behalf of Minnie Folk, nee Atkins, to be read in evidence in case pending in state court; and,

R. J. (Rube) SMITH (Rec., p. 1179):

Deposition of R. J. (Rube) Smith taken October 26, 1914, on behalf of Minnie Folk, nee Atkins, to be read in evidence in case pending in state court.

The depositions of these two witnesses were introduced in support of the Government's fabrication theory. Witness Dennis Jones was called and testified on behalf of the defendants, Minnie Folk (nee Atkins) and Page, at the trial.

C. S. WALKER (Rec., p. 1208; recalled, p. 1283):

Tulsa, Oklahoma, attorney; had no knowledge of the facts in connection with the controversy and testified in the capacity of legal adviser of Sadie James.

RUSH GREENSLADE (Rec., p. 1215):

Employe in the legal department of the Gypsy Oil Company, Tulsa, Oklahoma, detailed investigation made by that company in 1914 in connection with lease of the Gypsy Oil Company from H. U.

Bartlett; witness had no knowledge of any facts in connection with the controversy.

EDWARD CHARLES FRITSCHE (Rec., p. 1221; recalled, p. 1256):

An apprentice pharmacist in Adolph Lange's drug store in Leavenworth, Kansas, in the summer of 1885. The deposition of this witness was taken on behalf of defendants, Minnie Folk and Page, at Leavenworth. The Government subsequently subpoenaed the witness and produced him in open court at the trial, evidently with the view of supporting the fabrication theory. Witness was examined in open court at length as to his knowledge of the defendant, Minnie Atkins, and as to the occupants of the house at 217 Seneca Street, Leavenworth, in the year 1885. In the Government's direct examination of this witness counsel for the defendants, Folk and Page, brought out the manner in which the witness was induced to change his testimony on the stand from that given in his deposition. The witness' testimony as given in the deposition is strangely at variance with that as given on the stand in open court, and neither is of material assistance to the Court in the determination of the facts in controversy.

W. I. WILLIAMS (Rec., p. 1294):

Tulsa, Oklahoma, attorney; testified as to professional consultations with Sadie James. Had no

personal knowledge of the facts in controversy.

MALCOLM E. ROSSER (Rec., p. 1301):

One of the attorneys for the defendant, Nancy Atkins, and parties claiming under her. Had no knowledge of the facts in controversy; testified as to the giving of Minnie Folk's deposition at Tulsa, October 22, 1914.

E. C. HANFORD (Rec., pp. 1315-1411):

Counsel for the defendant, Minnie Folk, nee Atkins; called by the Government for the purpose of corroborating testimony of Minnie Folk, nee Atkins, at Rice and Lyons' office in Tulsa, Oklahoma, in October, 1914; and witness' testimony at the receivership hearing in March, 1915.

WALTER BANKS, Deposition (Rec., p. 1318):

SAMUEL NASH, Deposition (Rec., p. 1339):

The depositions of these two witnesses were offered by the Government in support of the fabrication theory, and at the time they were introduced the Government attorneys stated that they were offering only certain portions thereof for that purpose. The depositions of these witnesses were subscribed and sworn to by them on October 14 and October 20th, 1914, respectively, were taken with a view to being used in the case pending in the state courts. The defendants, Folk and Page, con-

tended that the introduction of the depositions of these witnesses on behalf of the Government was not limited to the specific purpose for which the same were introduced, but that, if admitted, were admitted for all purposes. The record is not clear as to whether the Court directly ruled on this proposition. The depositions are a part of the record and were introduced by the Government. The weight of these depositions is to the effect that these two boys, Walter Banks and Sam Nash, resided at Granny Letcher's home at 217 Seneca Street, in Leavenworth, in 1885, and that they knew an Indian woman named Minnie Atkins, who gave birth to a boy by the name of Tommy Atkins, who lived at Granny Letcher's house for a number of years.

FRANK L. MONTGOMERY (Rec., p. 1367):

Employed as United States Probate Attorney since February, 1914, and occupied that position when he testified in this case; this witness had no actual knowledge of any of the facts in connection with the birth of any children to either of the defendants, Minnie Atkins or Nancy Atkins. His testimony is directed mainly to the confession made by Sadie James as to the alleged conspiracy to prove that Minnie Atkins had a child named Tommy Atkins, and as to the statement or alleged confession that the witness secured from Minnie

Folk, nee Atkins, at Seattle, Washington, December 17, 1914.

W. P. Z. German, (Rec. p. 1411):

Of counsel for the complainants; took the stand to testify in reference to the evidence offered at the time of the receivership hearing.

George W. Dotter (Rec., p. 1417):

Was born at 217 Seneca Street, Leavenworth, Kansas, and lived there until July 28th, 1884, when the property was sold and his family moved out and went to live in the country.

John Rohr (Rec., p. 1422):

Clerk of the District Court of Leavenworth County in 1883, 1884, 1885 and 1886; well acquainted during the year 1886 with John Malone, a deputy sheriff; also was well acquainted in 1885 and 1886 with Lilly White, who ran a sporting house in Leavenworth; first knew her in May, 1885; detailed the occasion of his first visit to Lilly White's resort on May 1st, 1885; that she was then living next to the Feth house on Seneca Street, between Second and Third Streets; that he again visited the Lilly White resort between the 1st of June and 30th of September, 1885, with John Malone, and that John Malone was then living with Lilly White, and he attempted to fix this date by a business transac-

tion between the witness and John Malone. On cross-examination the witness was unable to fix the exact date of the transaction and admitted that he had allowed himself a latitude of several months between the 1st day of June and the 30th day of September, 1885.

WILLIAM P. FETH (Rec., p. 1438):

Architect, fifty years of age, formerly lived at 223 Seneca Street, Leavenworth, Kansas, and identified the Government's Exhibit "A-91" as a plat of the relative location of his former home and 217 Seneca Street in 1884, '85 and '86; that in 1885 he was fifteen years of age and prepared a petition (Government Exhibit "A-79"), directed to the city government, asking the removal of Lillie White from 217 Seneca Street, and other houses of prostitution, from that immediate neighborhood.

FRED METSCHAM (Rec., p. 1450):

Identified from official records of the city council action of council of August 5, 1885, upon the petition of Philip Feth et al. to have two houses of ill-fame occupied by Lilly White, 217 Seneca Street, and Stella Forest 303 Seneca Street removed and the nuisances caused thereby abated. The petition was read and referred to the city marshal with instructions to abate the nuisance. Witness testified that the original petition did not show the date of the filing with the city clerk but

that he found the same among the 1885 files of petitions, etc. A. certified copy of the petition was offered in evidence at the time of the witness' deposition and was objected to by counsel for Minnie Folk, Page and Henry Carter.

HARRY H. SECKLER (Rec., p 1455):

Identified the signature of John Seckler to the original Lilly White petition as that of his deceased father.

WILLIAM W. TRUE (Rec., p. 1457):

Sixty-three years of age and has lived in Leavenworth since 1883. Had been in the employ of the Abernathy Furniture Company since the spring of 1884 with the possible exception of the years 1890 and 1891; that the Abernathy Furniture factory was located in 1884 and 1885 on Second and Seneca Streets; that the premises at 217 Seneca Street were across the street from the factory; that in 1884 he was night watchman at the Abernathy Furniture factory and that 217 Seneca Street was occupied by Lilly White, who conducted a sporting house; was unable to state when Lilly White removed from Seneca Street to Choctaw Street; had no recollection of a colored family living at 217 Seneca Street; did not know Granny Letcher or her son, Jim Mayo; knew a colored boy named Sam Nash, whom he thought lived on Kickapoo Street.

C. F. W. Dassler (Rec., pp. 1462-1468):

Prominent Kansas attorney, and resided in Leavenworth since 1873. Identified certified copy of petition filed in the District Court of Leavenworth County, October 30, 1885, by C. F. W. Dassler and L. J. Hopkins v. Charlottee Calkins et al., and testified that the same was an action to foreclose a mortgage on premises known as 217 Seneca Street, and that Lilly White was made a party defendant upon witness' supposition that she was an occupant of the property.

Witness testified that service was not had on all the defendants in the suit and that the case was dismissed November 27, 1885, when he and Hopkins became the owners of the property, and that from November 28, until the spring of 1890, he collected the rent for the premises from Granny Letcher. Witness had no personal knowledge as to when Granny Letcher moved into the house.

La Ban Gardner Hopkins (Rec., p. 1477):

An attorney at law, of Leavenworth, Kansas, and was associated with C. F. W. Dassler in 1884 and 1885. His testimony is corroborative of that of the witness Dassler in reference to the taking possession of the premises at 217 Seneca Street.

Joe Malone (Rec., p. 1480):

A resident of Tacoma, Washington, and was em-

ployed as guard at the penitentiary, as a policeman, and in the sheriff's office at Leavenworth, Kansas, from 1884 until 1889; testified that when he was on the police force he became well acquainted with Lilly White, who conducted a sporting house on the south side of Seneca Street between Second and Third Streets; that she afterwards moved to Choctaw Street; also knew a woman named Ella Abbott, who conducted a sporting house at Third and Cherokee Streets, with whom witness became acquainted in 1889 or 1890; that he was intimate with her for a considerable length of time and never saw or knew of a boy around Ella Abbott's place by the name of Thomas or Tommy Atkins.

W. B. Shaugnessy (Rec., p. 1514):

Chief of Police of Leavenworth, Kansas; testified from records as to witness Joe A. Malone being on the Leavenworth police force in 1885 and 1886.

John T. Beechler (Rec., p. 1517):

Fifty-six years of age; came to Leavenworth when he was an infant in 1860, and resided there until the late nineties; knew an Indian woman by the name of Indian Mary, with whom he first became acquainted about 1875; remembered seeing her around Second Street about 1883; last knew of her in that year when she was living with an old

fortune teller on Seneca Street, between Second and Third Streets; knew Lilly White when she ran a sporting house at 217 Seneca Street and that Mrs. Letcher occupied the house after Lilly White moved out; never knew an Indian Minnie or a boy called Tommy or Tommy Atkins. On cross examination witness admitted that he had been a professional gambler for a number of years; that he was in Seattle, Washington, in 1889, and prior thereto had lived in other western states, making his livelihood at gambling, and that the Indian Mary he knew in Leavenworth was a middle-aged woman, about forty years old, in 1876.

ALICE O'DAY (Rec., p. 1535):

White woman who lived at 208 or 210 Shawnee Street, Leavenworth, Kansas, in the spring of 1885; engaged in the dressmaking business; that across the alley from her place of business was a sporting house conducted by a woman named Lilly White; that the house occupied by Lilly White was 217 Seneca Street; that in July, 1885, she made dresses for some of the girls living at Lilly White's; remembered the circulation of the petition to have Lilly White's house abated as a nuisance; was asked to sign it and refused to do so for business reasons; remembered Granny Letcher as the Mary Letcher who did laundry work for her mother; knew her after she removed to 217 Seneca Street; knew the people who lived with her, but never heard of an

Indian boy around the house by the name of Tommy. On cross examination, admitted she never visited Granny Letcher's house nor inquired as to members of her family and that there might have been a boy by the name of Tomm, or Thomas Atkins at the house, and that she would have had no knowledge of him. She attempted to fix the time that she made the dresses for the girls at Lilly White's house by her marriage in 1880, and the birth of her first child, Frances, in 1881, and the birth of her second child in 1882, and the birth of her third child, Clara Estelle O'Day, on Shawnee Street, between Second and Third Streets, and that she left Shawnee Street place when her child died.

A. L. Schott (Rec., p. 1581):

Secretary Mt. Muncie Cemetery: testified from cemetery records as to the death of Clara Estelle O'Day, February 14, 1887.

Joseph A. Eckert (Rec., p. 1583):

Lived in Leavenworth in 1884 and 1885 and knew Lilly White and was frequently around her place at 217 Seneca Street when she conducted a sporting house in the summer of 1885. Fixed the time definitely as the summer of 1885, and that Lilly White moved to Choctaw Street either in the fall of that year or early in 1886. On cross examination admitted that he was a constant frequenter of houses of ill-fame, drank considerably at that time,

and in the summer and fall of 1885 was associated with a baseball team called the "Leavenworth Reds;" that he had a distinct recollection of a photograph being taken of the ball team in 1885. The witness was required to produce the photograph, and when it was presented to the examiner, was asked:

"Q. Have you the picture of the team of 1885?

A. I have.

Q. Have you the picture now of the team of eighty-five?

A. I have the—(examining the photograph which is identified in deposition))—this is the wind-up of the eighty-five team, and they came here in eighty-six and got their picture taken; in the latter part of eighty-six there wasn't but two men of that team in the ball team of eighty-six; this is the eighty-five team and they were lined up in the spring of eighty-six (witness reads from inscription on photograph), 'Leavenworth Reds of 1886.'"

William Jackson (Rec., p. 1615):

Lived at Fort Leavenworth since 1861; employed in various capacities around the military prison; knew Herbert Grodevant and lived a few loors from him in 1884 and 1885. His family and

Grodevant's family frequently exchanged visits; knew a girl by the name of Indian Minnie, who worked at the Grodevant's in the late fall of 1884 and the winter and spring of 1885; that in the winter Minnie would join in coasting parties around the Fort; that he would see her frequently around the Grodevant yard or out on the porch; that she never appeared to witness to be in a family way and witness never heard of her having a child while she was working for the Grodevant's. On cross examination admitted he had no particular interest in the girl at Grodevant's; never paid any attenti.on to her more than he would any other servant around a neighbor's house.

At the conclusion of this witness' testimony, Government's Exhibits, "A-95", "A-96", and "A-97" were introduced, being tracings of the Grodevant residence and a photograph of Mrs. Woods' residence on North Eighth Street.

JOHN M. PURCELL (Rec., p. 1620):

Captain of the Watch, U. S. Penitentiary, Leavenworth, Kansas. Enlisted in the United States Army November 3, 1881; came to Leavenworth, December 16, 1881; was stationed at Fort Leavenworth in 1884, 1885 and 1886; knew Herbert Grodevant; knew where he lived near Fort Leavenworth; saw an Indian girl working around the Grodevant house in 1884 and 1885; saw her a number of times;

saw her back of the prison wall with a soldier named Oliver; she never appeared to witness to be in a pregnant condition. On cross examination is unable to fix the exact time that he saw Minnie around the Grodevant house; was not particularly interested in the girl.

PATRICK COLLINS (Rec., p. 1627):

Lived diagonally across the street from Herbert Grodevant in Fort Leavenworth in 1884; knew a girl named Indian Minnie who was a domestic in the Grodevant home; that she was there about a year; visited the Grodevant house several times while Minnie was there; never remembers seeing her in a pregnant condition. On cross examination did not remember of a girl named Maggie Curry ever working for the Grodevants. Did not know of Minnie being away from the Grodevant house and Maggie Curry substituting for her; unable to describe Minnie Atkins or tell anything about her appearance.

MABY A. COLLINS (Rec., p. 1643):

Wife of the witness, Patrick Collins, and corroborates her husband's testimony on direct examination. Knew all the Grodevant servants including Minnie and Mayme, Frances Roff and Julia Forkay; paid no particular attention to Minnie; that she was a slovenly sort of girl and wore loose clothes; that she might have been away from the

Grodevant house for a month or more without witness knowing it. Never knew of Maggie Curry working for the Grodevants.

WILLIAM E. DAWES (Rec., p. 1654):

Went to work at Fort Leavenworth in 1882 as assistant foreman to Herbert Grodevant; assisted in the construction of the Grodevant house and was around there on several occasions doing work for Grodevant in the fall of 1884 and 1885; saw a girl around the Grodevant house by the name of Indian Minnie; she never appeared to witness to be in a pregnant condition. On cross examiation testified that he saw the girl but a few times; paid little attention to her and was never personally acquainted with her.

LEWIS YOUNG (Rec., p .1662):

Lived adjoining the Fort Leavenworth reservation in 1884 and 1885; knew Herbert Grodevant and his family; saw an Indian girl around their house; never knew her to be in a pregnant condition; never spoke to her in his life; never knew her personally, and witness' observation of her condition was casual.

MRS. MARGARET JACKSON (Rec., p. 1669):

Knew a girl named Indian Minnie who was working for the Grodevants in 1884 and 1885; never

paid much attention to the girl or had any particular interest in her.

MARY N. CUNNINGHAM (Rec., p. 1673):

Lived at Fort Leavenworth in 1884 and 1885; knew the Grodevants and that they had a girl working for them that was pointed out to her as Indian Minnie; that in May, 1885, witness and her sister were picking crabapple blossoms and saw the girl Minnie, hanging up dish towels in the Grodevant yard; fixed the date of the incident by reason of the movement of the Twentieth Infantry; only saw Minnie once or twice after that event; never knew her to be in a pregnant condition. On cross examination testified she didn't know Minnie personally and only saw her a few times.

HELEN BEELER (Rec., p. 1695):

Sister of the witness, Mary N. Cunningham, corroborative of her sister's testimony in reference to the picking of crabapple blossoms and seeing Minnie at the Grodevants. Witness thought Minnie was a colored girl, but the Grodevants told her she was an Indian. Never noticed Minnie in a pregnant condition, but was not personally acquainted with her.

JAMES F. BIERLEY (Rec., p. 1704):

Worked at Fort Leavenworth from 1883 to 1886,

inclusive, driving a mule team; knew a girl named Indian Minnie, who worked at Herbert Grodevant's, but never noticed her in a pregnant condition; did not talk to her very often.

ROY REYNOLDS (Rec., pp. 1708-1711):

Clerk Census Office, Washington, D. C.; identified Government's Exhibit "A-98," United States return for 1890 of the family of Mollie Letcher. Testified that an examination of the records of the Census Office of the 1890 census return failed to show any person by the name of Thomas Atkins, Tommy Atkins, Tommodore, Commodore or Indian Tommy listed as a resident of Leavenworth.

LARRY BROWN (Rec., p. 1712):

CHICKEN DIXON (Rec., p. 1714):

GEORGE CLINTON (Rec., p. 1716):

These three witnesses, Creek Indians, were members of Euchee Town and testified to being present at the sessions of the Creek Council in May, 1901, and as to the procedure before the Dawes Commission at that time.

JOSEPH H. CALLAHAN (Rec., p. 1721):

Sixty years of age and came to Leavenworth, February 5, 1884; worked on the construction of the street railway system; went to work for Wells-Fargo Express Company January 22, 1887; knew

George Hyde, banker, and that an Indian woman worked for him in 1884, but never knew her name; located Van Tyle's livery barn at Third and Seneca Streets, where he kept his team when driving for the Wells-Fargo Company; saw an Indian woman with a baby on her back in that locality that they called Indian Mary or Indian something; describes the woman; unable to identify the woman he saw at Van Tyle's barn as the same woman he saw at Hyde's house.

ELI NIRDLINGER (Rec., p. 1730):

Attorney at law, Leavenworth, Kansas, and lived there since 1882; testified that in 1883 he knew an Indian woman in the neighborhood of Third and Seneca streets whose name was Mary; witness is positive that the time he knew this woman was in 1883. No cross examination.

KATHERINE WILLIAMS (Rec., p. 1732):

Knew a woman around Leavenworth and the reservation called "Indian Mary;" described her as dark-skinned, about thirty years of age, and that she was found dead on Salt Creek; witness never knew of her working any place or cooking for any family.

JOSEPH A. CRANSTON (Rec., p. 1743):

Partner of George Crilley in the livery business in Leavenworth, Kansas. Testified that in 1884 and

1885 he and Crilley had two barns, one on Seneca street and the other on Cherokee street; knew the Letcher house on Seneca sreet; never knew a woman there by the name of Indian Minnie nor a boy by the name of Tommy. On cross examination admitted that he spent most of his time at the Cherokee street barn and made no effort to post himself as to the inmates of the Letcher house on Seneca street.

CHARLEY HUDSON (Rec., p. 1747):

Negro, fifty-one years of age; in the fall of 1884 lived with Mollie Letcher at her house on Cherokee street; knew her when she moved to the house on Seneca street; never knew of a woman living with Mrs. Letcher by the name of Indian Minnie nor a boy who lived there by the name of Tommy.

LAURA THOMAS (Rec., p. 1763):

Negress, born in Leavenworth in 1865; knew Mollie Letcher when she lived on Cherokee street and afterwards when she moved to Seneca street; went to live with her on Seneca street soon after she moved there; never knew of a woman named Indian Minnie nor a boy named Tommy at Granny Letcher's; testified as to other persons who lived at Granny Letcher's .

On cross examination fixed the date when she went to Granny Letcher's as the day that the Scotts

and Mary Anthony went there. Witness also admitted that she had refreshed her memory as to dates after consulting with Sadie James.

ELIZABETH BRADFORD (Rec., p. 1825):

Negress, fifty-seven years of age; did not know Granny Letcher until 1893; her daughter, Georgiana Payne, married Jim Mayo, Granny Letcher's son, in 1890; knew the members of Granny Letcher's household; never knew of Indian Minnie nor a boy named Tommy Atkins around Granny Letcher's On cross examination admitted that she did not know Granny Letcher or any of the persons around her house until after 1893.

BELLE REED (Rec., p. 1839):

Negress, forty-six years old; lived at Mollie Letcher's as Jim Mayo's wife for two years, beginning September, 1888; did not know Tommy Atkins.

CORRIENNE WOOLFOLK (Rec., p. 1855):

Testified that she was born in 1889, the year her sister, Nancy Frances, died.

M. BAHLER (Rec., p. 1856):

Chief of the Leavenworth fire department; testifying from fire department records fixed June 18, 1886, as the date of the burning of the Brock

property, and February 25, 1889, as the date of the burning of the Kelly-Lysle mill.

ELIZA LAVALLAY (Rec., p. 1859):

Illiterate negress; moved to Granny Letcher's the night of the burning of the Kelly-Lysle mill; never knew Minnie Atkins, Tommy Atkins, Indian Minnie or Indian Tommy at Granny Letcher's. On cross examination admitted that she probably did not remain at Granny Letcher's more than a month.

ALICE PAIRE (Rec., p. 1885):

Negress, testified that on the night of the burning of the Kelly-Lysle mill she, her sister, Eliza Lavallay, her mother, Jane Scott, and her brothers and sisters moved into a room at Granny Letcher's house and lived there about a month, and that while there never knew of an Indian Minnie or a boy named Tommy.

MARY LOWER (Rec., p. 1906):

Negress, forty-three years old, moved with the witnesses, Eliza LaVallay and Alice Paire, and the other members of their family, to Granny Letcher's house the night of the Kelly-Lysle mill fire; that while at Granny Letcher's never knew an Indian woman named Minnie nor of any Indian boy being there. On cross examination admitted that she was

only at the Letcher house four times; that while there she worked out and that there might have been a boy there that she knew nothing about.

JULIA T. CARTER (Rec., p. 1924):

Negress, thirty-one years of age; sister of the witnesses, Alice Paire and Eliza LaVallay, corroborative of their testimony in reference to moving to Granny Letcher's the night of the Kelly-Lysle mill fire; never knew of a Tommy Atkins at Granny Letcher's.

GEORGE DALE (Rec., p. 1931):

Forty-one years of age and lived at Mollie Letcher's two years before she died in 1898, and never knew of Tommy Atkins living there.

JOHN PHILLIPS (Rec., p. 1935):

Negro, about forty years of age; went to Leavenworth when he was about seven or eight years old; went to live in the stone house on Seneca street next to Granny Letcher's and never knew a boy named Tommy Atkins.

FANNY ISAM (Rec., p. 1969):

Lived with Alice Woods on Seneca street in Leavenworth for about three years in the eighties near Granny Letcher's house; knew Walter Banks, Sam Nash and Jim Mayo, but never knew of a boy named Tommy Atkins living at Granny Letcher's.

Emma Gatewood (Rec., p. 1975):

Negress, forty-four years of age; lived on Seneca street between Second and Third streets, for four or five years in the eighties; lived in the rear of the Feth house; knew Granny Letcher, who died in the same block, and the people that lived with her; knew Jim Mayo, Walter Banks and Sam Nash; never knew a woman named Indian Minnie nor a boy named Indian Tommy around the house. This witness on cross examination testified as to a conversation between her and her deceased brother, Walter Woods, and E. C. Hanford, counsel for the defendant, Minnie Folk, at which she was present, and that her brother, Walter Woods, told Hanford that he remembered Tommy Atkins very well, played with him in the neighborhood, and described him to Hanford.

Nettie Brown (Rec., p. 1997):

Negress; at one time married to Jim Mayo and lived with him at Granny Letcher's place on Seneca street; knew Walter Banks and Sam Nash; never knew a boy named Tommy Atkins; unable to fix date when she went to live with Jim Mayo; never knew of any other children around Granny Letcher's with the exception of Walter Banks and Sam Nash; knew nothing of Jim Mayo's business and stated that Granny Letcher did not take care of babies. On cross examination this witness was unable to testify with accuracy as to any events in

her life; admitted she had been frequently arrested and convicted and at the time that she gave her deposition was living in open adultery.

RICHARD JOSEPH WINFIELD (Rec., p. 2026):

Negro, forty-five years of age; frequenter of Granny Letcher's house on Seneca street; knew Jim Mayo and another boy who lived there whose name he did not remember; never knew of an Indian woman or boy living at Granny Letcher's.

MATTIE TUTT (Rec., p. 2031):

Knew Granny Letcher in Leavenworth about two and a half years prior to her death in 1899; witness lived with Jim Mayo as his wife in 1899; never knew a boy named Tommy around the Letcher house when she lived there.

MARTHA MILLER (Rec., p. 2039):

Negress, forty-three years of age; knew Mollie Letcher when she lived on Seneca street; never knew of a woman named Indian Minnie or a boy named Indian Tommy living with her.

TOM MCKENZIE (Rec., p. 2049):

Negro, fifty-two years old; knew Granny Letcher in the eighties when she was living on Cherokee street and later on Seneca street; knew certain members of her family, but did not know

a woman named Indian Minnie or a boy named Tommy. Witness was unable to accurately fix dates.

C. M. Moates (Rec., p. 2059):

Practicing physician in the City of Leavenworth; resided there since November 27, 1888; knew Granny Letcher when she lived on Seneca street between Second and Third streets; began treating her in a professional capacity in 1889 and continued to treat her at various times until her death in 1899; was often at her house; never knew or saw a boy around there by the name of Indian Tommy or Tommy Atkins. On cross examination admitted that the only other persons at Granny Letcher's he knew were Jim Mayo and Sam Nash.

Mary Nash (Rec., p. 2065):

Negress, sixty years of age; stepmother of Sam Nash; witness knew Mollie Letcher all the time that she lived in Leavenworth; never knew of a woman named Indian Minnie or a boy named Tommy around the Letcher house. On cross examination admitted that she lived a considerable distance from the Letcher house, having moved to West Leavenworth in 1879; was only at Granny Letcher's twice after that and there were many people at the Letcher house she did not know.

GEORGIA FLINT (Rec., p. 2075):

Married Jim Mayo, whom she knew as Jim Philip, in October, 1890, at Atchinson, Kansas, and went to Leavenworth after her marriage and lived at the home of Jim Mayo's mother, Mollie Letcher, on Choctaw street, and afterwards on Shawnee street; that Sam Nash and Walter Banks were living with Mrs. Letcher while witness lived there; that there was also a little girl Mrs. Letcher was keeping by the name of Maude; that while she lived at Mrs. Letcher's she never heard of a boy by the name of Thomas, Tommy Indian Tommy or Thomas Atkins.

JOHN C. KETCHESON (Rec., p. 2085):

Resident of Leavenworth, Kansas; engaged in the printing and binding business; publisher of Green's City Directory of Leavenworth for the years 1885 and 1886; identified copies of the city directory of Leavenworth for these two years; testified that the data for the directory was generally furnished him in February or March of the year in which the same was published; the 1885 directory showed Lilly White living at 217 Seneca street; the 1886 directory showed Mollie Letcher at 217 Seneca street.

Mrs. A. G. Wilds (Alvina D'Laval) (Rec., p. 2132):

Witness had no personal knowledge of the defendants, Minnie Folk, nee Atkins, or Nancy Atkins prior to May, 1915, when she became acquainted with the defendant, Minnie Folk, when she was employed by a man named Kohler, who was an operative of a detective agency, to establish friendly terms with Minnie Folk for the purpose of installing a dictagraph in her home with a view to having conversations between the witness and Minnie Folk reported and detailed to J. Truman Nixon, of Tulsa, Oklahoma, by whom through Kohler, she was ostensibly employed.

Witness had previously been a school teacher in Seattle, and as an amateur detective detailed the manner of her becoming acquainted with Minnie Folk; her visits to Mrs. Folk's home, the installation of the dictagraph and conversations she had with Mrs. Folk. The records of the conversations transmitted over the dictagraph were reduced to writing; the witness testified these transcribed conversations were never sworn to for the reason that the dictagraph operatives at the receiving end disagreed as to the reported conversations. Witness also detailed at length incidents of a visit to Tulsa, Oklahoma, and conversations with J. Truman Nixon and the defendant, Chas. Page.

ROBERT L. BAUGH (Rec., p. 2159):

Testified as to an examination made by him of the records of the County Clerk of Creek County, and that there were no instruments of record affecting the title to the land in controversy, with the exception of the deeds, or patents, from the Creek Nation to Thomas Atkins, until the forged deed from Minnie Atkins to H. U. Bartlett in 1912, and that the first instrument of record from the defendant, Minnie Folk, was an oil and gas lease to the Gem Oil Company executed by Alexander McNabb, trustee, and Minnie E. Folk and Harry B. Folk, her husband, June 24, 1914, which was filed for record June 29, 1914.

STUART BREWSTER (Rec., p. 3902):

Thirty years of age, resident of Leavenworth, Kansas; introduced as a witness by the Government to rebut testimony of Alva Adams and other witnesses who knew Tommy Atkins in and around Leavenworth from 1895 to 1898; testified to knowing a number of boys with whom he played around the neighborhood where Alva Adams lived and played, but never remembered hearing of a boy named Tommy Atkins or Tommy.

R. O. LARKIN (Rec., p. 4376):

Seventy-three years old; testified that Mary Letcher, or Mollie Letcher, was formerly a slave

who belonged to his father; she first married a man named Billy Mayo; that she removed to Leavenworth shortly after the Civil War; that he saw her in and around Leavenworth in 1884; remembered her son, Jim Mayo, and a boy named Sammy; never knew of a boy named Tommy around her house. Witness was unable to fix definitely dates of his visits to Granny Letcher's or where she was living at the time, but "thinks" it was when Cleveland was nominated and elected in 1884.

ERNEST ENDRESS (Rec., p. 4382):

Born in Leavenworth, January 4, 1887; and knew Alva Adams, Willie Warren, Ed Baker and other boys who played in the neighborhood of Third and Seneca streets about 1897 or 1898. Testimony of witness was offered by the government in rebuttal of the testimoy of Alva Adams and other boys as to knowing Thomas Atkins or Indian Tommy in the same neighborhood. Testified that he did not know any boy by the name of Tommy Atkins, or Indian Tommy, that played with the boys he knew about that time.

FLOYD HUNT (Rec., p. 4386):

Thirty-two years of age, resident of Leavenworth, and lived at 210 Olive Street in 1896, 1897 and 1898. Remembered the names of a number of boys that he played with about that time, but could recollect no boy named Tommy Atkins, Commo-

dore, Indian Tommy or "Trailer." During the examination of this witness defendant's Exhibit "B-24," a map of the City of Leeavenworth showing the streets and alleys, was introduced in evidence. Witness made an examination thereof and testified that when he was nine or ten years old he was living on Olive street, some eight blocks from Third and Seneca streets.

W. D. WARREN (Rec., p. 4392):

Resident of Leavenworth, Kansas, thirty-one years old; witness introduced by the Government to rebut testimony of Alva Adams as to his knowledge of Tommy Atkins. Witness testified that from 1894 to 1898 he played with a number of boys around Leavenworth and named a number of boys around Leavenworth and named a number of boys mentioned by Alva Adams in his testimony, but that he never knew an Indian boy that played with them that was nicknamed "Trailer," or any boy by the name of Tommy Atkins; never knew any of the persons who lived at Granny Letcher's house on Seneca street and never played around that particular house. On cross-examination testified that the boys he ran with generally played around Fifth and Second streets.

T. W. BELL (Rec., p. 4433):

Of counsel for defendant, Henry Carter, testified in reference to incidents preceding the taking

of the deposition of Mrs. Mattie Cobb offered on behalf of the defendants, Folk and Page.

W. T. Hutchings (Rec., p. 4441):

Fixed April 20, 1885, as falling on Monday.

R. E. Martin (Rec., p. 4442):

A party in interest to this litigation under an oil and gas lease from Henry Carter; testified as to incidents preceding the taking of the deposition of Mrs. Mattie Cobb offered on behalf of the defendants, Folk and Page.

Benjamin B. Blakeney (Rec., p. 4446):

Of counsel for defendant, Henry Carter; testified in reference to incidents preceding the taking of Mrs. Mattie Cobb's deposition offered on behalf of the defendants, Folk and Page.

Irwin Donovan (Rec., p. 4451):

Attorney at law, Muskogee, Oklahoma; employed in the office of the Dawes Commission from September, 1904, to January, 1905; testified as to Dawes Commission procedure as to notations made on census cards.

Frank Kersten (Rec., p. 4454):

City detective, Leavenworth, Kansas; testified from the police court records of Leavenworth that records show no arrest of a Thomas Atkins from

1890 to 1891. This witness was produced by the Government to rebut the testimony of the policeman Patrick Delaney.

ELIZABETH DILLMAN (Rec., p. 4462):

Knew the defendant, Minnie Folk (nee Atkins), at Fort Leavenworth in 1885 when she was employed as a servant at the Grodevant house and testified in reference to a Decoration Day celebration of that year and that she saw Minnie Atkins there and that she was not in a pregnant condition.

This witness was called in rebuttal by the Government for the apparent purpose of refuting the testimony she gave in a deposition in October, 1914, in the state court case; a part of this deposition was read at page 3444 of the transcript to the effect that she became acquainted with Minnie Atkins at Fort Logan, Colorado, and never knew or saw her in Leavenworth, but that her knowledge of Minnie Atkins living in Leavenworth was entirely hearsay.

J. C. KENNEDY (Rec., p. 4465):

An employee of the office of the Superintendent to the Five Civilized Tribes; testified as to custom of office in preparing certified copes of census cards.

DR. FINIS W. EWING (Rec., p. 4469):

Practicing physician, Muskogee, Oklahoma; introduced as a witness in rebuttal by the Govern-

ment for the purpose of refuting the testimony of Dr. C. R. Carpenter, a witness for the defendants, Folk and Page. Admitted, on cross examination, that the condition found by Dr. Carpenter in Minnie Atkins at the time of the delivery of Robert Lee Peterkin might have been caused by the birth of a previous child.

THOMAS MOZEE (Rec., p. 4482):

Testified that he never knew a boy named Thomas Atkins around Ella Abbott's or Crilley's livery barn on Seneca street between Second and Third streets.

MRS. ADA AMERLY VAN DUZEE (Rec., p. 4505):

White woman who lived in Leavenworth in the eighties on Second street, west of 217 Seneca street; knew that the house was occupied by obnoxious white women; that there was complaint in the neighborhood as to the character of the inmates of the house; was unable to fix the time when the house was so occupied.

JOSEPH E. VORHEES (Rec., p. 4509):

County Clerk of Leavenworth County, Kansas; records of the sheriff's office of Leavenworth County, pertaining to deputy sheriffs for the years 1887, 1888 and 1889.

CHARLES R. WARREN (Rec., p. 4515):

Born at 202 Shawnee street, Leavenworth, in 1890; lived at various places in the city and played with different crowds of boys; never heard of a boy named Tommy Atkins or Indian Tommy or a boy nicknamed "Trailer." On cross examination testified that he never heard of Granny Letcher or knew anything of her until he read of the present case in the newspapers.

FRED S. COOK (Rec., p. 4522; recalled, p. 4535):

Was in the employ of the United States Indian service in March, 1915; testified as to conversation he had with Dr. C. R. Carpenter, a witness for the defendants, Folk and Page, in San Diego, California, in March, 1915. Testimony of this witness was offered to rebut the expert testimony of Dr. Carpenter as to Minnie Atkins having a child prior to the birth of Robert Lee Peterkin. The witness' testimony on this particular proposition is as follows:

"Q: Did Dr. Carpenter at that time say that he attended Minnie Atkins at the birth of Robert Lee Peterkin and that that was the first child she gave birth to?

A. He didn't say Minnie Atkins. He knew her as Peterkin. He attended her at a place owned, I believe, by a woman by the name of Woods, and in the conversation the

question was asked if this was her first child. He said, so far as he could remember it was, but that his records would bear him out whichever way it was and that his records were at Leavenworth, Kansas."

DR. JOHN HUTCHINGS WHITE (Rec., p. 4538):

Practicing physician at Muskogee, Oklahoma, qualified as an expert, and introduced by the Government to rebut the testimony of Dr. C. R. Carpenter that from the examination made by Dr. Carpenter at the time he attended Minnie Atkins at the birth of Robert Lee Peterkin her physical condition showed that she had previously given birth to a child. Witness was asked a number of hypothetical questions on direct examination and on cross examination admitted that a condition such as was testified to by Dr. Carpenter at the time of the birth of Robert Lee Peterkin could have been caused by the birth of a previous child.

F. L. MONTGOMERY (Rec., p. 4545):

Mr. Montgomery was recalled by the Government for the purpose of rebutting certain testimony of the witness E. C. Hanford in reference to occurrences at Seattle in December, 1914.

C. B. MALCOMB (Rec., p. 4559; recalled, p. 4601):

Introduced in rebuttal by the Government and

detailed conversations had with the defendant, Chas. Page, and his agent, F. B. Long, with reference to finding a dead Indian boy who would correspond to the Thomas Atkins on the Dawes Commission records. On cross examination testified that he last time he talked with Page about the Atkins case was in March or April, 1914, and that a few days before testifying on the stand he had a conversation with C. Lipscomb, a banker of Bixby, Oklahoma. Witness was interrogated as to a memorandum that he examined prior to going on the stand and was ordered by the Court to produce the same and he admitted that he had secured it in the office of the United States Attorney.

C. H. (Hook) Rogers (Rec., p. 4579):

Testified as to conversation had with F. B. Long in March or April, 1914, and employment by Long; introduced as a witness by the Government to rebut testimony of F. B. Long; on cross examination admitted signing a receipt for $50.00 which was settlement in full for all his services to Long and Page. Also admitted that he was under arrest for counterfeiting.

D B. Elliott (Rec., p. 4587):

Attorney at law, Tulsa, Oklahoma; detailed a meeting with Chas. Page in February, 1914; and a subsequent conversation in 1915 when witness was representing J. Truman Nixon.

MITCHELL WADSWORTH (Rec., p. 4598):

Son of Kate Holden and cousin of Minnie Folk, nee Atkins, and Nancy Atkins; testified as to receiving a letter from Minnie Atkins, written from Detroit, Michigan, in 1898 or 1899, asking witness to file for her and her two boys, Harvey and Charley Harrison.

W. P. Z. GERMAN (Rec., p. 4637):

Of counsel for the complainant; detailed conversation with Dick Nichols in Leavenworth, Kansas, in 1916, as to what Rube Smith had told Nichols about money being paid for witnesses in the Atkins case.

Analysis of Evidence as to Minnie Atkins Pro and Con.

Before entering upon the task of examining the evidence above briefly set out both for and against Minnie Atkins, we desire to preface our remarks with a few suggestions.

We must not lose sight of the fact that the Circuit Court of Appeals, in its opinion on the receivership phase of this case, measured the strengtth of the Government's testimony and declared that on the testimony as introduced by the Government against Minnie Atkins there was no probability of a recovery against her by the Government on the allegations of the bill at a final trial.

The Court in that opinion said that in order to jutify a receivership of real estate in the possession of adverse parties the plaintiff must estabblish to the satisfaction of the Court hearing his application for a receiver that a strong probability existed that the plaintiff would prevail in that case. Judge Sanborn, on page 185, Federal Reporter, Volume 233, at the bottom of the page, asks this pertinent question:

> "Did the plaintiffs (meaning the Government) establish the fact that there was a strong probability that they would prevail on final trial?"

After stating the burden which the Government was required to carry in this case the Court uses this language, and we quote at length, because it not only answers and sustains the proposition we are now asserting, but throws much light as to the showing which must be made by Nancy Atkins in this cause. Judge Sanborn, beginning on page 186, Vol. 233, Federal Reporter, says:

> "The only evidence the plaintiffs produced was the affidavit of Mr. Merrick, verified February 25, 1915, more than thirteen years after the event; that in May, 1901, he was a clerk and employe of the Dawes Commission; that on May 23, 1901, he 'listed for enrollment as a citizen by blood of the Creek Nation, the name of Thomas Atkins, who is enrolled opposite roll number 7913 of the final roll of Commission and on census card No. 2707, Field No. 2774, a true copy of which census

card is hereto attached and made a part of this affidavit; that the evidence which induced him to list Thomas Atkins was the authenticated 1895 roll of Creek citizens, which said roll was used and relied upon by said Commission and by myself as the representative of said Commission 'in enrolling the name of Thomas Atkins.' (We may here suggest to this Honorable Court that Merrick's testimony is much fuller in this case now than it was in the receivership case, he having testified here in person and simply by affidavit in the receivership case.) The census card recorded these facts: That Thomas Atkins was a Creek Indian of half-blood, 10 years of age; that he was enrolled on the authenticated Creek tribal roll of 1895 as of Euchee township, under the name of Thos. Atkins No. 213, and that on the roll Minnie Atkins was recorded as his mother, and a white man as his father. Mr. Merrick further deposed that he had searched and found in the office of the Dawes Commission, where such matters are kept, memorandum or notation indicating that evidence or information was had or received by the Commission on the question whether Thomas Atkins was living or dead on April 1, 1899, and that he had no recollection of any such evidence or information had or received by himself, although somebody—who it was he said he could not recall—gave him information as to about the time of the alleged birth and parentage of the said Thomas Atkins; that the final roll of citizens by blood of the Creek Tribe 'was made up from the said census card under my personal supervision and compared and reviewed by some member of the Commission, and the

enrollment thus made was approved by the Secretary of the Interior on March 28, 1902.' "

Folk v. *United States,* 233 Fed. Rep. at pages 186-187.

We call the attention of the Court to the fact that this is exactly, in substance, what Merrick testified to in this case except that Merrick added, which gives great force to his testimony, tha when he made out the census card he intended to designate Thomas Atkins as the son of Minnie Atkins, and that he did so designate him, and that the Dawes Commission so found.

The Court after discussing the various Acts of Congress applicable to the controversy, resumes:

"The Act of March 1, 1901 (31 Stat. 869, c. 676, Section 28), provided that all citizens who were living on the 1st day of April, 1899, entitled to be enrolled under the Act of June 28, 1898, should be placed upon the rolls. The Act of June 28, 1898, was not simply an Act of Congress. It embodied and ratified the agreement between the Creek Nation and the United States. * * * Among the rolls and records of the Creek Tribe duly authenticated by the approval of the Creek Council, was a roll of citizens made by the tribe of 1890, another made in 1895, the pay roll of that nation for the year 1895, upon which a per capita payment was made to citizens of the tribe. On the roll of 1890 appeared 'Minnie Atkins (Thos. and Mary, 2 children).' On the roll of 1895 appeared the names of Minnie Atkins and Thomas Atkins and the receipt of Minnie Atkins for a

payment to herself and also a payment of like amount to her as the per capita payment due to her son, Thomas Atkins."

Folk v. *United States,* 233 Fed. Rep. at page 188. The learned Judge then takes up the Acts of Congress making the rolls evidence, and declares that the Dawes Commission was justified in taking the rolls as evidence, and uses this language:

> "As the Commission was required by the Acts of Congress to give full force and effect to the authenticated tribal rolls, the usages and customs of each tribe and was by those acts given access to all their rolls and records, the Creek Rolls of 1890 and 1895, on each of which Minnie Atkins and Thomas Atkins as her son were enrolled as citizens of the tribe by blood, constituted not only *prima facie,* but in the absence of strong and persuative countervailing proof, conclusive evidence before the Commission, of the right of Thomas Atkins to enrollment as a citizen of the Creek Tribe."
>
> —*Folk* v. *United States,* 233 Fed. Rep. at page 189.

The Court then takes up another issue and that is whether or not Thomas Atkins, the son of Minnie, ever lived and, after reviewing the testimony, he declared it to be conflicting and, standing alone, without corroboration, would have left the issue doubtful, but that doubt no longer existed when he considered what he declares was the most reliable evidence in the case, and this is his language:

"But this testimony is not all the evidence, nor is it the most reliable evidence, upon that issue. There is the Creek tribal roll of 1890, which records Minnie Atkins and two children, Thomas and Mary; there is the Creek tribal roll of 1895, which records Minnie Atkins and Thomas Atkins, there is the receipt of Minnie Atkins upon the pay roll of that year for the payment to her of the per capita allowance for her son Thomas; there is the testimony of the care with which these rolls were made by the town king, corrected by the town meeting, investigated and purged by the committee of the Creek Council and there is the fact that these rolls were made and approved within 11 years after the alleged birth of Thomas, among the acquaintances of Minnie Atkins, all naturally jealous of and watchful to prevent any undue payment of tribal funds to each other, and there is the fact that under the Creek Agreement the tribe had the right to appear before the Commission and by its agents and its attorney, who during all the enrollment proceedings was under retainer and salary to protect the rights of the tribe, and to prevent the enrollment by the Commission of Thomas Atkins if he was not entitled thereto, and the Creek Agreement that if this was not done the roll of the Commission should be final."

—*Folk* v. *United States*, 233 Fed. Rep. at page 190.

And then the learned Judge makes this deduction from all the testimony:

"Is it not much more probable that those rolls are right, that Thomas Atkins was living

when they were made, and that the people of Euchee Township, at whose meetings they were corrected, knew that he was living and satisfied the officers of the tribe of that fact, than it is that the testimony of witnesses gathered by interested parties to testify to occurrences 20 years behind them tending to show that no such person existed is true? This Court will hesitate long to hold on such testimony that Thomas Atkins never existed in the face of these old and hitherto unassailed corrected rolls of the Creek Tribe, and their persuasive evidence of a living Thomas Atkins, the son of Minnie Atkins, when they were made. The proof now before the court that he never existed, that he was a myth, is not clear, unambiguous, convincing or satisfactory to this Court."

—*Folk* v. *United States*, 233 Fed. Rep. 191.

From these citations in the opinion of the Court it is clear that it was the opinion of the Court, that the roll of 1890 was clear and showed Minnie Atkins to have a son named Thomas; that the roll of 1895 was unequivocal and showed Minnie Atkins to have a son by the name of Thomas; that the pay roll of 1895 was unequivocal and showed Minnie Atkins to have a son by the name of Thomas; and that the census card prepared by the Dawes Commission was unequivocal and showed Minnie Atkins to have a son by the name of Thomas. Now the Court was careful to state the force and effect of these rolls as probative evidence. It was careful to say that if no other evidence had been taken

than the rolls themselves, that it required overpowering proof to set aside these rolls. This being true, it declared that the Government's position, even outside of the rolls, left the issue as to the existence or non-existence of Thomas Atkins gravely in doubt, and that, therefore, this doubt would operate to defeat the Government.

Since the receivership trial a great amount of additional evidence has been taken both by the Government and by Minnie Atkins, and we make bold to now say that the testimony in favor of Minnie Atkins is an hundredfold stronger than it was on the receivership hearing, and that the testimony of the Government, while somewhat stronger, does not compare in its additional strength with the added strength of the testimony in favor of Minnie Atkins. If this is true, then the evidence of the Government outside of the rolls, when considered in conjunction with the evidence in favor of Minnie Atkins, still leaves the claim as to the non-existence of Thomas Atkins (if that could under the law be now considered by this Court, and we challenge it strenuously), as unsustained and exactly the same condition exists as existed when the 8th Circuit Court rendered its opinion as above. No matter how favorably we may view whatever evidence the Government and Nancy offered at the trial, the rolls turn the scale, if indeed the scale needed turning, in favor of the claim of Minnie Atkins.

The history of Minnie Atkins presents a tragedy seldom met in the life of a young, wild, untrained and unprotected girl. The Creek people sent her to Carlisle school in 1881 when she was little more than a child. She was a wild girl, difficult to manage and indeed so unruly that the authorities at Carlisle concluded that they would hire her out, and consequently sent her to Leavenworth to work for a banker by the name of Hyde. She went to Mr. Hyde's in July, 1884. According to its chronology, we first take the testimony of Mrs. Cornelia Hyde Collins. This witness is the daughter of Mr. and Mrs. Geo. H. Hyde, and was born in Leavenworth in 1870; was about fourteen years of age when Minnie came to work for her parents; she (Minnie Atkins) was well grown for her age and rather forward in her development according to Mrs. Collins' testimony. The witness left Leavenworth in 1888, went to Honolulu in the Hawaiian Islands; remained there until 1897, married and has since resided at Pittsfield, Massachusetts.

And we ask the Court here and now to observe the high character of the witnesses for Minnie Atkins in this case. There are some, of course, who were disreputable and whose testimony ought to be subjected to rigid examination, but in the main her witnesses are men and women of high social standing and unimpeached and unimpeachable veracity. Such a woman is Mrs. Cornelia Hyde Collins. She testified that she knew Minnie Atkins when she

worked for her father and mother in 1884 and remembers a soldier on several occasions hanging around the back door of the house with Minnie Atkins; states that Minnie left their place some time in 1884 or the beginning of 1885, and that shortly after she left the employment of her father and mother, probably some few months, she saw Minnie in a pregnant condition on the street in front of a disreputable house and was much shocked at the sight, and that she realized for the first time why she had left the employ of her father and mother. This witness places Minnie's pregnancy in 1885. It is in evidence that Minnie went from Hyde's to Grodevant's at Fort Leavenworth and there worked for Grodevant. At this time she was pregnant with this boy, Tommy.

Now we present another witness to the Court of the very highest character. This witness, Mrs. Emily Ripley, testified that she went to Leavenworth in 1878 with her husband, who was employed by the Government as chief clerk in the Leavenworth penitentiary; that she knew Mrs. Grodevant, with whom she was on intimate terms and was a near neighbor. That she made frequent visits to the Grodevant house and often saw Minnie Atkins and saw her when she was in a pregnant condition and spoke to Mrs. Grodevant about it. She fixed these visits to the Grodevants as the year 1885, because she said in that year she gave birth to one child and lost another by death; that her living

child was born in January, 1885, and that her other child died in August, 1885, and was buried at Fort Leavenworth, and she fixes the time that she saw Minnie pregnant between the date of the birth of her child in January and the death of her child in August; that she never saw Minnie Atkins after the death of her child in August, 1885, but that she saw Minnie a short time after she noticed her pregnancy and she had resumed her normal shape.

In this connection the Court will keep in mind the Grodevant book which showed Minnie Atkins working for Grodevant at a certain time in 1885, her disappearance for several weeks in June of that year and the employment during the interim, of Mrs. John D. Sheehan, then Maggie, or Margaret, Curry. It will thus be seen that the Grodevant book, upon which the Government relied, but which was thoroughly explained, corroborates Mrs. Emily Ripley.

Minnie Atkins called David Atchison, a man who has lived in Leavenworth, Kansas, for sixty years, and who was engaged in the wood, coal, ice and feed business in Leavenworth in the eighties. Atchison testified that he knew Minnie Atkins in 1885 by the name of "Indian Minnie" when she would come to his wood and coal yard to buy coal for Granny Letcher, and that she frequently had a baby in her arms. That Granny Letcher lived on Seneca street between Second and Third streets in a frame building owned by a German named Dot-

ter; that the baby carried by Minnie was called by his employes as "Minnie's papoose," and he fixes the year positively as 1885 by identifying it with a boom in Leavenworth which he declared was a well known and epochal fact in that city. This witness was before the Court. He fixed the time in 1885 when he saw Minnie Atkins as the fall of 1885 which, according to Minnie's testimony, was just a few months after the baby was born. The Court saw this witness and heard him testify and knew what manner of man he was.

L. B. Bell is employed in the Sheffield Car and Equipment Company of Kansas City. He knew Indian Minnie; he knew Indian Tommy, the boy at Granny Letcher's that went by the nickname of "Commodore," and was usually called Tommy Atkins. This witness was not impeached nor contradicted. He fixes this date by reason of his marriage in the fall of 1883 and by the fact that he went to work in the fall of 1884 for a transfer company in the city of Leavenworth.

Mrs. John Welch carried meals to her father at Grilley's barn twice a day. She knew this boy, Tommy Atkins, and saw him frequently at Granny Letcher's.

Philip Tucker is engaged in the livery business in Kansas City, Mo. He formerly lived in Leavenworth, resided there for thirty years, knew Indian Minnie, remembered seeing her there around

Granny Letcher's. He knew she gave birth to a child at Granny Letcher's; saw her nursing this child on Mrs. Letcher's porch and carrying the child in her arms; the child's name was Tommy and nicknamed "Commodore," and was an Indian boy. This man is a business man and has no interest in this case.

Alexander Ford and Wm. D. Ford, two colored witnesses, corroborated David Atchison and were working for him at the time Minnie came with her child to get wood for Granny Letcher.

The witness Roderick, whose testimony we have briefed above, is an old soldier. The trial judge saw him upon the stand and he was a bluff, straightforward, sincere, honest old man. He identifies Indian Minnie with great particularity. He fixes the date at which he left Leavenworth as being in 1886 by reference to a cyclone that blew down a girl's school building. It was about July 5, 1886. Later on in the testimony, which we have briefed above, Theresa Swoboda, assistant bookkeeper and stenographer in charge of the files of the Leavenworth Times, identifies copies of the issues of the Leavenworth Times of May 12 and May 13, 1886, establishing the date of a cyclone and windstorm at Leavenworth at which time thirty people were killed. This old soldier clinches the date at which he saw Minnie with a child at Granny Letcher's as the summer of 1885, and the Court will note that he testifies positively that he

knew Mollie Peters, an old fortune teller, who lived on Third and Seneca streets, across from Letcher's, and on or about the last of June or the first day of July, 1885, at the request of this fortune teller, he went over to Granny Letcher's and saw Indian Minnie in bed with a baby; that he took the baby in his arms and carried the baby over to the fortune teller's house.

Now we beg that the Court will constantly keep in mind that the Peterkin baby which was born to Minnie was, under all the proof, by the Government and defendants alike, never at Granny Letcher's house, but was born in another house in another part of the city of Leavenworth and so, therefore, every witness who puts Minnie with a baby at Granny Letcher's house excludes all idea that it was the Peterkin baby without reference to the date at which they saw Minnie Atkins at Granny Letcher's.

We come now to Dr. C. R. Carpenter. This man testified that he delivered Minnie of her Peterkin baby in July, 1886, and that when he delivered her of this baby he discovered infallible signs in the way of lines and corrugations in her uterus which was proof positive that she had given birth to a full grown child prior to the birth of the Peterkin baby. An effort was made by the Government, in rebuttal, to discredit this witness and to show that his expert evidence as to signs of former pregnancy and childbirth were not accurate and

reliable; but on cross-examination all of the Government's witnesses admitted that this might have been true and that these signs were a fact to be considered; but Dr. F. B. Fite, a distinguished physician and surgeon, testified that the signs of former pregnancy and childbirth found upon this woman, Minnie Atkins, when she had the Peterkin child were reliable, and were practically an infallible test.

We call the attention of the Court to the fact that the Government found this man Carpenter through their detectives and brought him up for examination, and for some reason, unknown to us, after they had talked with him, refused to put him upon the stand and upon such refusal he was put, at a hazard, upon the stand by Mr. Hanford, attorney for Minnie Folk (nee Atkins) and told the story against the Government which he finally told at the trial of this case.

We then come to Milton Webster, whose testimony is briefed above. Milton Webster works for an express company in Kansas City. He knew Minnie Atkins well, saw her about the 30th day of May, 1885, at Granny Letcher's in a highly pregnant condition. He saw her some time later with a little baby four or five weeks old. This man Webster evidently is a working man, so far as was known, of unimpeachable character. He testified that he fixed the date of May 30, 1885, when he saw her pregnant, because that was Decoration

Day, and the day that Broaddus shot Jobson, two significant facts calculated to remain indelible upon a man's memory.

Adolph Lange is a man of the highest intelligence and character. His identification of Minnie Atkins and of her pregnancy in 1885 is one of the most acute and impressive facts in this whole case. He said he used to sell the old fortune teller, Mollie Peters, a balsam mixture; that she suffered much dysentery and that he frequently saw Minnie Atkins with Mollie Peters in his drug store; that he remembers particularly that he saw her some time in the spring or summer of 1885, and that she was in a pregnant condition. He identifies this date with the utmost precision and particularity. He went to Europe in 1884; made a proffer to the Court of the papers which showed his passage on a certain ship, showed receipts of different hotels in Europe for bills paid in the summer and fall of 1884, and fixed his return to Leavenworth in the month of September, 1884. He knows that he saw Indian Minnie the next year after his return in that pregnant state, and one of the peculiar coincidents connected with Indian Minnie and with his testimony is the little pocketbook incident. He had two pocketbooks of the same kind in his store. They opened on the side, and he stated that when Indian Minnie came in his store in 1885 in her pregnant condition she took a fancy to one of these pocketbooks and he sold it to her. He kept the

mate to this pocketbook and has it now and has carried it all these years as a receptacle for his lead sinkers, he being a great fisherman and much addicted to that character of sport. He says when he saw Minnie in the summer of 1885 the weather was warm, she was thinly clad and her pregnant condition was plainly observable. A man like Lange doesn't make any mistakes and when, under oath, seeking to tell the truth and whole truth after all these years, his testimony must be given weight in any court. He testified in person before the trial court.

We now come to A. W. Hopkins. This colored man showed great intelligence upon the stand and was unmoved and unshaken by an aggressive and searching cross-examination. He saw Minnie Atkins with this child in her arms in 1885. He fixes this date with great particularity. He is Grand Secretary of the Knights and Daughters of Tabor. He has been connected with that organization since 1883; sent to Memphis as a delegate to a meeting of the Grand Temple and Tabernacle at that place in 1884. He there met a woman who was a sentinel at that convention, whose sessions were in secret, by the name of Jane Anderson. She asked him if he knew Minnie Atkins at Leavenworth, and he said he did not. She asked him to look her up. He stayed in Memphis for some time during the fall of 1884 and returned to Leavenworth late in that fall and was taken sick and was

unable to get around for some time. In 1885 he made some inquiry about Minnie Atkins and found out nothing, but later on he learned that she was staying around Granny Letcher's and in the late summer of 1885 saw her with a baby in her arms. He told Minnie what the Anderson woman had said to him at Memphis and Minnie said that the child she was carrying was her child. He saw Minnie at this time right near Granny Letcher's place. This witness was personally before the court.

The Court knows, because of the vigilance and zeal of the Government's attorneys, that all these public happenings which were pointed out by the foregoing witnesses as fixing dates had been investigated by the Government and found to be true, because the Government has neither assailed nor attempted to assail the correctness of these dates with reference to the public events.

The next witness to whom we direct the special attention of the Court is Patrick Delaney. This witness was a policeman and fireman, held office in both departments in Leavenworth for a number of years. He was on the police force in Leavenworth in 1894, laid off two years and went back in 1896, 1897 and 1898. This policeman, whose duty it was, of course, to run down unlawful and objectionable characters, testifies that he knew this Indian Tommy well and knew him around Granny Letcher's, and that he actually arrested this boy some time in 1896 or 1897. This man appeared to be a

straightforward man and is now employed as night watchman at the Kansas City stock yards, a position of trust and responsibility. This witness was present at the trial.

We now come to a witness whose testimony it seems to us is very impressive and of the very highest probative force. James M. Allen was born in Leavenworth in 1852, and the proof shows that he was the first white child born in Leavenworth. He had been engaged most of his life in business as the general agent of the Rock Island railroad at Leavenworth, and was superintendent and ticket agent at the union depot at Leavenworth in 1884 and 1885. Allen's work carried him into all parts of the city of Leavenworth. He knew this girl Indian Minnie very well, and he testified that one day while in the neighborhood of Crilley's barn while out on a mission as soliciting passenger agent to build up the passenger traffic on his railroad, he went into Granny Letcher's house. It must be remembered that Jim Allen was a young man and probably knew Minnie better than he discloses. But, however this may be, he swears positively and unequivocally that he saw this Indian Minnie, the Minnie Atkins who is one of the defendants in this case, because there was no other Indian Minnie at Granny Letcher's, with a baby in her arms, and he saw her several times with this baby at Granny Letcher's, that her child was about three or four months old. He knows that this must have been

either in 1884 or 1885, and that it could not have been as late as 1886 because he was at that time not on the street looking after passenger business.

We again repeat that if Minnie Atkins was at Granny Letcher's house in 1884 or 1885, as the case may be, with a baby, it could not have been the Peterkin baby, and it was necessarily this boy Thomas Atkins.

The next witness was Mattie Cobb. This woman, while the history of many members of her family is shady, is, as far as was disclosed, a woman of good character. She was a Mrs. Edwards in 1885, and she had a daughter born to her in that year by the name of Grace. This daughter was born across the street from and close to Granny Letcher's house. She knows that her daughter was born in the spring of 1885, and that Indian Minnie, who waited on her for awhile during her confinement, was pregnant with the child, and shortly afterwards she knows that Minnie Atkins had a child at Granny Letcher's and she saw this child.

We now come to the boys who played with Thomas Atkins around Granny Letcher's house. Thomas Higgins was a man thirty-six years of age, was born in Leavenworth and lived there until he moved to Kansas City in 1905. He knew Thomas Atkins, who lived at Granny Letcher's house, and played with him.

Alva Adams, another witness, knew Tommy Atkins as a boy and played with him. Saw him the last time about 1897 or 1898. The witness himself was arrested for petty theft of some brass from the railroad yards, and served a short sentence in the county jail in Leavenworth. We have already seen that Thomas Atkins was arrested about the same time. He detailed in a most convincing way the games that he and Tommy and the other boys used to play, told about the name "Trailer" which was given to Tommy, and in fact gave his testimony in a very convincing way. (This witness was before the Court.)

Elof A. Crilley knew the boy Tommy Atkins at Granny Letcher's house. He was George Crilley's son and lived just across the street from Granny Letcher's house. He knew Walter Banks, Jim Mayo and Sam Nash, who also lived at Granny Letcher's house. He appeared to be an honest man. George Crilley, whose testimony was very lengthy, knew this boy, nicknamed him "Commodore," and testifies in much detail about his knowledge of him and events in the neighborhood.

Dennis Jones, a colored lawyer of Leavenworth, Kansas, went upon the stand. He is a negro of very high character, if we judge him by the evidence and his conduct in this case. His testimony is full and complete. He identifies Tommy, remembers him at Granny Letcher's, knew Tommy when

he was growing up, thinks he saw him around there until he was twelve or thirteen years old, may not have been that old—and he positively identified Minnie Folk in the court room as the woman he knew as Indian Minnie in Leavenworth in 1884 and 1885, and whom he saw at Granny Letcher's. (This witness was before the Court.) He had been savagely attacked by Sadie James, self-confessed crook and star witness for the Government. The Government claimed that Dennis Jones had helped to fabricate a case against the Government and in favor of Minnie Atkins. Under this state of facts we introduced the District Judge of Leavenworth County, Kansas (Judge Wendorff); Stance Myers, Sheriff of that county for four years and member of the State Board of Control of Kansas, and O. B. Taylor, cashier of the First National Bank of Leavenworth, Kansas, as to Jones' standing in the community (Rec., pp. 3734-3736). These men, who have known Jones for many years, vouched for his integrity and veracity. This is vastly important, for two reasons: First, because these men would not have journeyed all the way to Muskogee to testify as to the character of Dennis Jones, unless Jones was a negro of unusually high character; and, second, because the testimony of Jones is exact and convincing as to the existence of Thomas Atkins and as to Minnie being his mother.

The depositions of Walter Banks and Sam Nash were offered by the Government to show that

this was a fabricated case, but when offered became evidence for all purposes and became evidenc for the defendants, Minnie Atkins and Chas. Page, as much as for the Government.

Sam Nash knew this boy and testified with exactness as to his age, color and the time he remained with his grandmother.

Walter Banks was a boy at Granny Letcher's at the same time, and he testified in detail about the boy, Tommy, and showed him at Granny's for a long period of time, and established beyond a doubt his identity.

We appeal to the Court here and now, if these witnesses, some of them of the highest intelligence and character have been broken down or discredited or impeached in any way. It is impossible that such witnesses as Mrs. Ripley, Mrs. Collins, Dave Atchison, Adolph Lange, James Allen, the old soldier Roderick, and the others whose names are not necessary to be mentioned because already considered, do not leave a fixed and lasting impression upon the mind of the Court that the testimony is true, that they have testified with care and exactness; that they are witnesses who appreciate the obligation of an oath, and were zealous to state the truth and nothing but the truth. If Minnie Atkins, by any sort of legal legerdemain in this case, were ordered here and compelled to make out a *prima facie* case showing the existence of a certain

Thomas Atkins as her son, we ask the Court if the evidence we have quoted does not and would not establish this *prima facie* case?

The other evidence in favor of Minnie Atkins we have quoted and we will not take the time to analyze in detail, but we have brought definitely before your attention this class of witnesses as to the identity and existence of Thomas Atkins as the son of Minnie Atkins at Granny Letcher's, and unless the Government has broken down these witnesses and has shown that they testified falsely or that they are mistaken, there is no escape from the conclusion that their testimony in this regard is of the greatest force and probative effect.

We shall not undertake to go into detail in discussing the evidence against Minnie Atkins. We have summarized it as faithfully as we could, endeavoring to give our adversaries the benefit of every phase of this testimony, and we hope the Court will consider this testimony against Minnie Atkins in connection with the testimony to which we have called your attention, and see and ascertain if the case of Minnie Atkins has been met by the Government, or by Nancy.

By an examination of the evidence introduced in behalf of the Government, you will find that the witnesses testifying against Minnie Atkins are, many of them, of doubtful character, and most of them testify as to one fact here and another fact

there. The Government was evidently seeking by this means to tie these incidents together as to these particular circumstances and make a connecting chain of evidence. We think the Government has failed to do this. We say the GOVERNMENT HAS FAILED to do this, and if the Government failed, Nancy failed, because Nancy never introduced ANY EVIDENCE as to the non-existence of Minnie's child, but relied upon the Government's evidence. We introduced, however, much affirmative evidence against Nancy's claim.

Now, going back to the quotation from Judge Sanborn's opinion, let us see how this case stands. Judge Sanborn said—and it must be remembered that many of the witnesses testifying for the Government on the trial of this case, tesified at he receivership hearing—that the evidence of the Government, outside of the rolls, when contrasted with the evidence in favor of Minnie Atkins, left the Government without a case. The cause is infinitely more doubtful (outside of the rolls), now as to Thomas Atkins' non-existence as the son of Minnie Atkins, so far as the Government and Nancy Atkins' interests are concerned, than it was at the receivership trial, because by an examination of this record you will readily see and must conclude that the case of Minnie Atkins has been strengthened an hundred-fold by new, unimpeachable and, it seems to us, perfectly truthful witnesses.

The Circuit Court said in the former appeal herein, that if the issue is left in doubt as a naked proposition of fact as between the Government and Minnie Atkins, the rolls, including the pay roll of 1895, which are themselves original evidence and sufficient upon which to predicate a judgment by the Dawes Commission, htat Thomas Atkins was in fact the son of Minnie Atkins, turned the scale and made it conclusive, not only as against the Government, but, necessarily, as against Nancy Atkins, who seeks to use the evidence of the Government.

Sam Brown's Testimony

Some stress was laid by the Government upon the proposition that Sam Brown testified that he procured the names of Minnie's children from John Davis at a certain time and that the evidence in the case shows that he could not have procured it from John Davis, because John Davis, at the time Sam says he procured the information from him, was in the penitentiary.

We think that Sam Brown was mistaken about procuring this information from John Davis, although the Government thought and alleged in its pleadings that Sam Brown did procure this information from John Davis, and it was not discovered that he probably did not procure it from John Davis until near the end of the trial. The attorneys

who represented Minnie Folk, Page and others made no objection to the introduction of the penitentiary record showing John Davis in the penitentiary, because if it was of any benefit to the Nancy case, she was entitled to it. But it seems to us that this is a "tempest in a teapot." We cannot understand how this matter can affect substantially the result reached in this case by Judge Campbell, the trial judge. It must be remembered that this proof that John Davis was in the penitentiary was before him and it must be assumed that he found that Sam Brown might be mistaken as to the source from which he acquired his information as to Minnie's children. The trial judge held that Sam Brown certainly obtained his information from same reliable source, because it appears indisputably that the pay roll of 1895 fixed and established that the information furnished by Sam Brown to the Creek Council, and upon which the roll of 1895 was predicated, was substantially correct. The Government called Sam Brown as a witness on page 214 of the printed record and examined him at length. In his testimony, commencing on page 214 of the record, he says that Noah Gregory was Town King of the Euchees in 1890, and that Sam Brown was Town King in 1895. He testified that tribal payment was made to the members of the Creek Nation or Tribe in 1890 and 1895. He testified that he had much to do with the making of the 1890 roll that was used

in the 1890 payment; that he was Clerk of the convention of the Euchee people and took the census of 1890, and that Noah Gregory presided at that meeting. He testified that he knew about the names of Nancy Atkins and Mamie Atkins in connection with that roll; he testified that he was a second cousin of these two women, and that he knew them personally and knew their parents. He testified that the convention above spoken of was held on the square grounds on Snake Creek and that he was clerk of the convention in 1890; he testified that the convention was called to represent Indian families, see how many there were in the families so that they could take a true census and enable the members of the tribe to draw their money. He stated that in that convention the question of the children of Mamie (or Minnie) Atkins was discussed; he testified one of the neighbors, said he thought Thomas Holden, who was a brother-in-law of Minnie Atkins, knew something about Minnie's children. That Thomas Holden, brother-in-law of Minnie, got up in the convention and stated Minnie had two children, but did not know their names, and that Mamie (or Minnie) was placed on the 1890 roll as having two children. He testified, and Mr. German, the Government counsel, agreed with him on page 218 of the printed record, that the words Mamie and Minnie were used interchangeably, and that Mamie or Minnie on the roll meant the same person. He testified that the names of the two children of

Minnie were afterwards put on the roll as Thomas and Mary. He testified as to the care with which the rolls were made, and that the 1890 roll was formally adopted as the census roll by the Euchee people, and passed up to the Creek Council, which adopted the same. He testified on page 228 that he had lived in Euchee Town for many, many years; that the names Thomas and Mary put over Minnie's children on the roll of 1890 could not refer to Thomas Atkins, the father of Minnie, nor to Mary Atkins, the mother of Minnie, because he said that Thomas Atkins, the father had died twenty years before the 1890 roll was made; and that his wife, Mary, died long before the 1890 roll was made; that these names could not have been put there as representing the father and mother of Minnie, because everybody knew they had been dead a long, long time. On page 228 he again testified that he took the census roll of 1890 to the Creek Council, and that after they examined it they ratified it. That there were many people around the Creek Council who were Euchee Indians, and that they were as well acquainted in the community as he was. He testified further, and it was not disputed, that Thomas Atkins, the father of Minnie, was a Coweta and not a Euchee, and if he had been given as a living man on the census roll he would not have been on the Euchee roll, but on the Coweta roll. He testified in detail as to being present when Minnie drew her money in 1895. On page

232 he testifies that he had known Nancy for years; knew her well, and that he drew for Nancy and drew all the money that she was entitled to draw.

An analysis of this evidence shows, of course, that there are inaccuracies in Sam Brown's statement, as there were in nearly all the statements of every witness who testified as to these happenings more than twenty years ago. The substantial, undisputed fact remains that Sam Brown, Euchee Town King, passed his information up to the Council. The Creek Council adopted it and placed Minnie, with two children, upon the roll of 1890, and one of those children was named Thomas, the very Thomas whose number and identity was fixed in the roll of 1895 and fixed by the Dawes Commission. Brown declares that Thomas Holden, a brother-in-law of Minnie, got up in the 1890 Euchee convention and stated that he knew Minnie had two children at that time, and all the testimony in the case, together with Minnie's testimony, accounts for these two children. Suffice it to say that the roll of 1890 had Thomas Atkins upon it as son of Minnie. The roll of 1895 had the name of Thomas Atkins upon its face as the son of Minnie, and the pay roll had exactly the same thing, because the evidence shows that these people were put on the roll in family groups, and these children followed the name of Minnie on all of these rolls and no child follows the name of Nancy on any of them. So, however weak or strong the testi-

mony of Sam Brown may be, or however weak or strong the testimony of other witnesses may be with reference to this matter, the Creek people who from 1890 to 1895, during a period of five years, were investigating and striving to make these rolls correct, and after this investigation seeking evidence, as the testimony shows, from every quarter, declared that Thomas Atkins was the son of Minnie Atkins and placed him on that corrected roll as such.

We feel certain, therefore, that these rolls have not been successfully impeached, and whatever may be the lapse of memory on the part of witnesses as to what occurred long ago, these old rolls speak with mute strength and power the truth as found by the Creek people, and these rolls, it seems to us, are conclusive as a matter of evidence in this cause, both as against Nancy and against the Government.

Conflicting Statements of Minnie

Attorneys for the Government in their brief make some reference to the conflicting statements of Minnie Atkins. We hardly deem it necessary to go at length into this matter, but in view of the labor which has been expended upon the question by the Government, we shall discuss this matter under a separate heading.

Minnie Atkins testified six times in this case; five times under oath, subject to cross examination, as follows:

First. At Sapulpa in the injunction suit hearing, in Creek County District Court, wher she was cross examined by attorneys representing Nancy and those claiming under her.

Second. In the office of George Williams Snyder at Kansas City, Mo., where she was questioned in detail by Attorney Rice. This examination being preliminary to the taking of her deposition in the Creek County District Court against Nancy Atkins et al.

Third. In the office of Rice & Lyons, in Tulsa, at which time her deposition was taken in the Creek County case.

Fourth. Before the United States District Court at Muskogee in the receivership hearing.

Fifth. Before Examiner Penick, at Seattle, Washington, when her deposition was taken for use in the final trial of the case in the Federal court.

Sixth. In the final trial.

At the time of Minnie's discovery in Seattle, in June, 1914, she told Mrs. Catherine Sisk McComb (Rec., p. 3852) that the was the mother of five children. Mrs. McComb at that time was

the wife of a lieutenant in the regular army and had employed Minnie as servant in her home. Minnie's statement to Mrs. McComb that she was the mother of five children was made before she knew anything about the value of the Thomas Atkins allotment, or before she had been advised that there would be any serious litigation concerning it.

The next statement Minnie Atkins made concerning her children was in conversation with F. B. Long at Seattle in June, 1914, at which time she made the assertion that she was the mother of Thomas Atkins, and that he was dead.

The next statement was made to her attorney, Mr. Hanford, and to Mr. Long, in July, 1914, at which time the data from which her first affidavit was written was procured. At that time she asserted that she left Thomas with a colored woman at Leavenworth. She first stated that the boy was born in a private house; subsequently changed that statement and said he was born in a Sister's hospital. She did not remember the date, but it was assumed the birth occurred either in 1886 or 1887. She said she left the baby with a colored woman in Leavenworth, but refused to give the name of this woman. In this conversation, Mr. Hanford's recollection has always been that Minnie's first statement was the baby was born at the house of a colored woman, but that she

quickly changed this assertion and fixed the place of birth as the hospital.

Through all the various sworn statements she made during the progress of this case, there are some inaccuracies, but in only two instances did Minnie Atkins intentionally conceal the truth. First, as to the place of birth of her son; and, second, as to the Peterkin child. She explained in the receivership hearing and in her deposition at Seattle, and in the final trial at Muskogee, her first false statement by declaring repeatedly she did not want the white people to know that her baby was born in the home of a negro. Hanford told Minnie on his second trip West that she must tell the truth; that it was useless to conceal anything. Hanford further testified that the reason she refused to tell the truth about the birth of her son was because she did not want the people back in Seattle to know it; she was afraid Captian McNabb and McCombs would find it out, but that the negro woman's name was Granny Letcher.

Frank L. Montgomery testified (Rec., pp. 1372-1391) that in his conversation with Minnie at the time she made her alleged confession, the question of immunity was discussed. He admitted (Rec., pp. 1384-1399) that Sadie James, Robinson the detective and Buhl were with him. He also stated that he used the fact of Minnie's having executed a deed to Chas. Page at the time he talked about

the penitentiary and granting her immunity. In her preliminary statement, made in Kansas City, where she was examined by Attorney Rice, Minnie stated that Tommy was born soon after she left the Hydes. At this time it was very apparent that she was trying mighty hard to tell the truth and at the same time conceal the facts about the Peterkin baby. At this time none of Minnie's attorneys nor friends knew of the Peterkin baby. Hanford had been East and had seen Peterkin, but Peterkin told him that this child was a girl, and Hanford apparently confused the information Peterkin gave him with the daughter Mabel, or or Alice, born in Ft. Logan. In that preliminary statement Minnie went so far as to confess that the date of the birth was 1885 (Rec., pp. 4051-4055). She said she left Hydes when she began carrying the child and that the reason she went to Granny Letcher's to give birth to the baby was because she did not want the white people to know about it.

Again, in the deposition taken in the office of Rice & Lyons for use in the Creek County District Court, she states the baby was born soon after she left Hydes (Rec., pp. 1305, 1390), but she did not testify as to the Peterkin baby in this deposition. However, she did say she worked for the Grodevants, and that she went from the Grodevants to the Staffords.

The Government in its arguments has attached great importance to its assertions that the only witness aside from Minnie herself who even attempted to fix the date of the birth of Thmas, was Mrs. Cobb.

Mrs. Ripley, who made such a good appearance on the stand, fixed the time when she saw Minnie pregnant, at the Grodevants.

The date of the birth was fixed by John Roderick, the old soldier.

Witness John F. Roderick having testified that his contract with the Government for conveying freight from the City of Leavenworth expired on the first day of July, 1885 (Rec., p. 2938), and that soon afterward he went to Fort Riley, and from there to Kansas City, testified as follows (Rec., p. 2940):

"A. On or about the last of June or first of July I was down at Crilley and Cranstons' barn. I went in to Aunt Mollie's. Aunt Mollie told me she just brought a baby into the world and for me to go over with her and see it. I went over there and I saw a baby lying by the side of the woman called Indian Mary, recognized her, and then went back home. In about three or four weeks afterwards I went down again and asked how the baby was getting along. She said it was get-

ting along fine; asked me to go over there and got the baby. I went over and got the baby. She was nursing at the time. I took the baby over to Aunt Mollie's.

Q. Now, you said Indian Mary, or Indian Minnie?

A. Indian Minnie.

Mrs. Cornelia Hyde Collins, daughter of Geo. H. Hyde, fixed the time when she saw Minnie pregnant as some few months after she left the Hyde home.

Claude Hamilton, Government witness, fixed the time of Minnie's pregnancy as some months after she came out to the Post for the Grodevant family.

Not only did Minnie conceal the facts as to the Peterkin baby from her own attorneys, but she also very successfully concealed the facts as to the Peterkin baby from Montgomery, who is supposed to have procured the alleged confession from her.

Testimony of Mrs. Emily Ripley (Rc., p. 2798):

"Q. Did you ever at any time see an Indian woman at Mrs. Grodevant's?

A. Yes.

Q. You know what they called her?

A. Indian Minnie.

Q. Indian Minnie. Was there anything that attracted your attention to her. I mean in her general appearance?

A. Yes, her physical development and her unusual coloring and hair.

Q. Did you see her at Mrs. Grodevant's?

A. Oh, yes.

Q. Now, I will ask you whether or not, when you were at Mrs. Grodevant's, you noticed anything peculiar about her physical condition?

A. Yes.

Q. What did you notice? State to the Court.

A. She appeared to be about to become a mother. I saw her through a window one day. Mrs. Grodevant and I were in the room and were discussing her appearance.

Q. Did she appear very far gone or little gone in pregnancy?

A. Well, it seemed to be advanced.

Q. Did you speak to Mrs. Grodevant about it?

A. Yes, I did; I just said, 'Minnie looks as if she was pregnant,' and Mrs. Grodevant said, 'I believe she is.'

Q. When was this?

A. It was in 1885.

Q. How do you know it was 1885?

A. 1885 was a memorable year for me,—

Q. Well, just compose yourself.

A. I gave birth to a child and lost a child that year.

Q. In what portion of the year?

A. In January, 1885.

Q. And one of your children died the same year?

A. In August—

Q. In August, 1885? Do you know whether that was before or after your child died?

A. That I saw Minnie?

Q. Yes.

A. It was before.

Q. Mrs. Ripley, did you see Minnie after that?

A. Oh, yes, the year after my child died.

Q. After you saw her in the yard, when you say she was pregnant?

A. Yes, sir.

Q. How did she appear then?

A. Her condition was normal.

Q. Did you speak to Mrs. Grodevant about that?

A. Yes. Mrs. Grodevant said, 'yes, Minnie has a baby;' that is what she said."

Particular notice should be taken of this first-hand intimate conversation with Mrs. Lettie Grodevant. Mrs. Ripley knew Mrs. Grodevant before she was married; knew her as Lettie West, the daughter of West, and was a frequent visitor at her home. In this whole immense record this testimony of Mrs. Ripley's is the only word from the mouth of Mrs. Grodevant with reference to Minnie's condition. Not a single Government witness, and there were many of them testified to being intimately acquainted with the Grodevant family, had recollection of any statement made by Mrs. Grodevant as to Minnie Atkins. Subsequently, the Court stated (Rec., .p 2799), in reply to objection by counsel for the Government, that he would not consider the evidence given by Mrs. Ripley with reference to her conversation with Mrs. Grodevant. On cross-examination (Rec., p. 2806), Mrs. Ripley stated that she was very posi-

tive that she saw Minnie in a pregnant condition in the spring of 1885, during the months of May or June. Further, on cross examination of this witness, the Court (Rec. p. 2820), made the following ruling, to which counsel for the Government excepted:

> "While those witnesses are coming, the record may show in view of the cross-examination of this witness, that the ruling of the court this morning, in excluding from the record the conversation between this witness and Mrs. Grodevant at the time this witness testified she noticed the pregnant condition of Minnie Atkins, will be set aside and that conversation will be permitted to remain a part of the record."

With reference to the date when Thomas Atkins was born to Minnie at Leavenworth, particular attention should be paid to the testimony of Mrs. Cordelia Hyde Collins, who fixes the date by the time Minnie left the employment of her father and mother, Geo. H. Hyde (Rec., p. 2827). Mrs. Collins testified as follows:

"Q. State whether or not she worked for your family?

A. She worked for us for months. I can't tell how many months, as general housework girl.

Q. Do you remember the occasion of her leaving your employment?

A. Yes, quite suddenly and unexplained at the time.

Q. Did you ever see Minnie after she left your employ?

A. I saw Minnie once after she left us, on Choctaw Street.

Q. That was in the city of Leavenworth?

A. In the city of Leavenworth.

Q. What was the occasion of your seeing her at that time?

A. I was driving back from town. I had been on an errand and was driving up with our horse and buggy, and I saw Minnie on the left hand side of the street.

Q. On the left hand side of Choctaw Street?

A. Of Choctaw Street, without hat on, apparently as if she were staying there.

Q Do you know Leavenworth? .Can you state between what cross streets that would be?

A Yes, I saw her on 4th street, so she would have been between 3rd and 4th.

Q. I will ask you, Mrs. Collins, if you can describe the nature of the place you saw her in front of?

A. Choctaw was a disreputable street and a good many rough sort of people lived down there.

Q. I will ask you, if the place you saw her in front of was one of those places?

A. Yes.

Q. Did you know Minnie's physical condition at that time?

A. Yes, I noticed immediately and was

shocked and realized that must have been why she left our house, when she was pregnant.

Q. About how long was that after she left your house?

A. I think it must have been two months possibly, enough so that I realized why she left our house."

The Grodevant book shows that Minnie went to work for Grodevants in October, 1884. She, therefore, left the Hydes during or very shortly before that month. The testimony of Mrs. Collins, therefore, absolutely fixes the time when Minnie was in a pregnant condition with her first born child.

Wih reference to the number of children and her conflicting statements to the number, attention is called to the testimony of Mrs. Catherine Sisk McComb (Rec., p. 3852). Mrs. McComb is the wife of an army officer stationed at Fort Lawton. Minnie had worked in her family, and prior to investigation in this case by the Government and before Minnie Atkins had steeled herself to conceal the facts as to the place of the birth of her son, Thomas, she told Mrs. McComb that she was the mother of five children.

In connection with the statements of Minnie and the transactions between her and others at Seattle and near there, we desire to call special attention to the testimony of Captain Alexander J. McNabb,

who was a soldier of highest repute at the time, and on the staff of General Pershing during the late war. His interest in Minnie Atkins was entirely impersonal, and he intervened for the purpose of her protection. We think his testimony shows more clearly than any other the way in which this Indian woman was beset by men desiring to destroy her and to get the fruits of her inheritance.

Care with which Dawes Commission Examined the rights of citizens in the Creek Nation and the exhaustiveness with which every case was considered.

In the case of *Woodward* v. *De Graffenried*, 238 U. S. 284, this Court held that the communications to Congress by the Dawes Commission were a public matter, and public history of which the courts took notice, because that Commission was an arm of Congress, and, in the execution of its duties was the eyes and ears of the Government of the United States. In this connection, therefore, we call attention to the reports of the Dawes Commission to Congress and extracts from such reports.

On page 6 of the Annual Report of the Commission of date October 3, 1898, it is stated:

> "In addition to what was theretofore required of them, this act and these agreements, among other things, require them to take a census of all the citizenship of each nation before perfecting a final roll for allotment, and in doing so they are 'authorized and required to make correct rolls of the citizens by blood

of all the tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto and their descendants born since such rolls were made,' etc.

"*This compels the Commission to pass judicial judgment upon the right to citizenship of every name upon the citizenship roll of each of the Five Tribes. No clerk or other substitute can do this work. It must be done personally by the Commission and upon a hearing of evidence in each case where there is any question.*"

On page 36 of the Annual Report for the year 1902, the Commission said:

"The Act of Congress of March 1, 1901 (31 Stat. L. 861), which was ratified by the Creek National Council, May 25, 1901, provides for the enrollment of all citizens of said nation entitled to be enrolled under Section 21 of the Act of Congress of June 28, 1898 (30 Stat. L. 495), who were living on the 1st day of April, 1899. * * *

"It therefore became necessary to determine who of these citizens were living on April 1, 1899, and who of said children born subsequent to that date were living on July 1, 1900. * * *"

In the report of the year 1903, at page 29 thereof, is set forth the following:

"The nearer the work approaches completion, the greater the degree of care required in determining the rights of applicants for en-

rollment. . When it is considered that no person who died prior to April 1, 1899; no child born subsequent to April 1, 1899, etc. * * * is entitled to enrollment, it will readily be seen that in cases of this character, where the question of date arises, the evidence must be *clear and convincing.* * * *

"No record of births and deaths is provided for by law in the Creek Nation, and in very few instances coming under the observation of the Commission does it appear that such record has been kept by the relatives of the persons for whom applications have been made. The testimony submitted is from memory alone. In cases where the birth or death occurred within a few days of a date vital to the case, it is apparent that the date of such birth or death must be clearly and accurately established. *In order to arrive at the truth supplemental testimony has been necessary in many cases, and extreme precaution is essential in order that injustice be not done the applicants or the Creek Nation.*"

In this report, under the sub-head "Enrollment Cases," it is stated:

"During the year ended June 30, 1903, 178 original applications, embracing 276 persons, were made to this Commission for enrollment as citizens of the Creek Nation. *Additional testimony has been taken in 54 cases.* In 107 cases, embracing 128 persons, the applicants have been listed for enrollment without formal decision, *no objections having been entered by the attorneys for the Creek Nation.*"

From these official reports of the Commission rendered while it was still in session, it is manifest that enrollments of citizens on the final rolls, as certified to the Secretary of the Interior, including the name of Thomas Atkins, were made upon affirmative evidence as to every fact judicially determined and essential to enrollment; and that the proceedings had and manner of enrollment, were not *ex parte*, but that all enrollments were made with the knowledge of the Creek Nation and its officers, including the Creek National Attorneys, whose duty it was to represent and contest for the interests of the Tribe.

It seems clear, therefore, inasmuch as the Dawes Commission did purge the roll of '95, and did declare that after such purging and examination, Thomas Atkins must be enrolled as a citizen of the Creek Tribe, conclusion inevitably follows that the appellant is not permitted to go, not only behind the judgment of the Dawes Commission, but to go behind the judgment of the Creek Council which enrolled Thomas Atkins upon its roll.

PAGE AND HIS ASSOCIATES WERE PURCHASERS IN GOOD FAITH.

On the hearing of this case before the Circuit Court of Appeals for the Eighth Circuit on the receivership question, the Court, in its opinion used this language:

> "Nor is there any satisfactory or persuasive evidence that the defendants knew or had notice that Thomas Atkins never existed before they purchased their lease or title. They had the right to rely and act upon the Creek rolls of citizenship made by the tribe itself, and upon the final rolls made by the Dawes Commission until they received satisfactory evidence that these rolls were false and the evidence fails to convince that they ever had such evidence before they purchased."

The evidence now before the Court as to the good faith of Page and his associates, is the same. and, perhaps, stronger than it was when this case was heard in the receivership matter. We refer the Court to the witnesses hereinafter set out and to their testimony shown by the transcript.

The first witness introduced as to the good faih of Page was R. A. Josey. Mr. Josey was President and one of the principal stockholders of the Gem Oil Co., which originally purchased the lease, afterward assigning the same to Page & Josey, a one-half interest each. At page 3666 of the record, under direct examination by Mr. Stuart, Mr. Josey testified as follows:

> "Q. Mr. Josey, do you remember acquiring a lease on what is known as the Thomas Atkins property?
>
> A. I do.
>
> Q. Did Mr. Long work for your company?
>
> A. He did.

Q .Who were your attorneys?

A. Rice & Lyons.

Q. At that time? Now, Mr. Josey, I will ask you when was the first time, after you acquired that lease, that you ever heard anybody say or claim that Thomas Atkins was a myth, as near as you can remember?

A. Well, as near as I can remember, at the time of this confession that was made in Seattle.

Q. Sadie James' confession?

A. Of Minnie's confession.

Q. Of Minnie's confession?

A. Yes, sir.

Q. In Seattle?

A. In Seattle.

Q. And you say that is the first time you ever heard of any claim of that sort?

A. That is my best recollection."

Chas. Page at the beginning was Vice-President of the Gem Oil Company and owner of one-half the capital stock thereof. Subsequently, the Gem Oil Company, which purchased the lease originally from Minnie Atkins, assigned the same to Mr. Page and Mr. Josey, a one-half interest each. On page 7838 of the record, Mr. Page testified as follows:

"Q. When did you for the first time hear that the Government, or anybody else, claimed that Thomas Atkins never existed at all?

A. Well, the first time I ever heard that was —that confession of Minnie's, I believe."

Further, on same page, Mr. Page testified as follows:

"Q. Did you get some sort of information that suit was going to be brought to cancel this patent?

A. Yes, I heard they were going to start suit, and parties would come to us and tell us—

Q. Well, that they were going to bring suit?

A. That they were making a tentative filing and so on, and getting ready to bring suit, but we had no fear of that, because we did not think the Government would lend itself to anything of that kind with Mr. Buhl and those people."

On page 3879, during direct examination of Mr. Page, Mr. Stuart offered in evidence the following telegram:

"January 18, 1915.

"Cato Sells,
"Commissioner of Indian Affairs,
"Washington, D. C.

"We are advised Creek Attorney Allen has been authorized to bring suit to set aside Creek deed issued to Thomas Atkins. Allen is working on false statements. He is misinformed. We have not been permitted to submit facts. We are mailing you full and complete statement of facts and request action be deferred until statement reaches you. We court the fullest investigation.

(Signed) "Chas. Page.
"R. A. Josey."

On the same page, Mr. Stuart read into the record the following telegram:

"Washington, D. C., January 21, 1915.
"Chas. Page and
"R. A. Josey,
"Tulsa, Oklahoma.

"Your telegram January eighteen. Suit instituted on January eighteen against Minnie Atkins and others. Case in charge of Department of Justice and Creek Tribal attorney.

(Signed) Cato Sells,
"Commissioner."

On the same page of the record, Mr. Stuart read into the record the following letter:

"January 20, 1915.

"Hon. Cato Sells,
"Commissioner Indian Affairs,
"Washington, D. C.

"Dear Sir:

"Please refer to our telegram of January 18, 1915, with reference to proposed suit in the U. S. District Court for the Eastern District of Oklahoma by the United States for and on behalf of the Creek Nation of Indians, to cancel the deed issued to Thomas Atkins, in which telegram we stated we would submit to you complete statement of facts. Our purpose in writing you was to be given an opportunity to present our side of the case prior to the filing of the suit. Now that the suit has been filed, we feel that it would be presump-

tuous for us to present any statement of facts, unless requested to do so by your office or the office of Creek Attorney Allen. We are ready and willing at any time to furnish you or Mr. Allen with any information desired. As stated in our telegram we court the fullest and most complete investigation of our case.

"Yours very truly."

Again, on page 3880 of the record, Mr. Page testified as follows:

Q. Mr. Page, I will ask you this: If prior to the time Minnie Atkins made that confession you entertained any doubt of any kind that Thomas Atkins existed? Did you have any doubt about it?

A. I never thought—I always believed that Tommie existed at all times after getting the record."

E. O. Curtis was put on the stand by the defendants. He testified (page 4169) that he is auditor for Chas. Page, familiar with the books of Chas. Page and that he had prepared statements as to the expenditures on the Atkins lease (page 4171 of the record). (During the testimony of Mr. Curtis, on p. 4171, defendants, Minnie Atkins et al., Exhibits B-22 and 25, were offered in evidence.) These exhibits appear on pages 4950 to 4958 of the record. Defendants' Exhibit B-22 is a statement of the expenditures on the Atkins lease up to December 17, 1914, which was the date

of the alleged confession of Minnie Atkins. This statement shows the expenditures on the lease up until December 17, 1914, to have been $51,600.81. The first expenditure on the lease being a rig purchased on August 6, 1914, at a cost of $1,165.-00. Defendants' Exhibit B-23 shows the expenditures on the Atkins lease from December 17, 1914, to January 18, 1915, to have been $15,800.38, the first sum mentioned, to-wit, $51,600.81, the expenses up to December 17, 1914, was the investment on the lease prior to the alleged confession, which confession was the first notice we had that the Government was active in the case or that any one claimed that Thomas Atkins was a myth and that he never existed. Defendants' Exhibit B-23, showing the total of $15,800.38, was the amount of money we spent between Dec-17, 1914, when the alleged confession was made, which, as above stated was the first notice of the Government's claim and the filing of the suit by the Government on January 18, 1915.

As to the statements above referred to, under direct examination by Mr. Stuart, page 4169 of the record, Mr. Curtis testified as follows:

"Q. I will ask you whether or not you have a book that treats of the Tommie Atkins lease?

A. Yes, sir.

Q. Have you drawn from those books the total amount of the expenditures, com-

mencing in August and ending in January?

A. Yes, sir.

Q. August, 1914, and ending in January, 1915?

A. Yes, sir."

On page 4172, under cross examination by Mr. German as to the exhibits above mentioned, Mr. Curtis testified as follows:

"Q. Have you two exhibits?

A. One is to December 17th, and the other is from December 17 to January 18th."

Under cross examination, the Government attempted to show that some of the expenditures entered on the exhibits were simply book entries, and that the money had not actually been paid out.

Curtis was subsequently called for further cross examination and testified as to the expenditures and as to the office methods of doing business.

As to the Government's contention that some of the items shown had not been paid for, but were simply charged on the books, the Court, on page 4577, ruled as follows:

> "Now it is perfectly clear to me that so far as these defendants who took charge of that lease are concerned, if they incurred the liability, whether they paid it at once or paid it six months in the future, they incurred the liability,

> and it amounted to the same thing as cash. There is no question about it, and it is just as much an evidence of good faith if they incurred an indebtedness that they had to pay as if they paid cash."

Geo. Kinney, on page 4158 of the record, testified that he was superintendent during the year 1914 and 1915 for Chas. Page and R. A. Josey. He testified that they began drilling on the Atkins lease in the year 1914, some time during the month of November. Mr. Kinney further testified on page 4160 that his employers had five steel tanks constructed during the winter of '14 and 1915; that he could not give the exact dates, and that his recollection was that the tanks cost $14,500 each. On cross examination by Mr. German, page 4160, Kinney testified that the No. 2 well, which was the first one defendants drilled, was spudded in November 3, 1914, and showed the Bartlesville sand on January 3, 1915.

The Law of This Case and the Necessary Correctness of the Judgment Rendered Herein From the Application of Such Law.

We think there can be but one conclusion in this cause when measured by the adjudicated cases, and that is, that the rolls of the Tribe, together with the evidence in support of said rolls, are practically conclusive of this controversy. What

is known as the Wildcat case heretofore referred to in this brief was the first expression by the Supreme Court of the United States as to the binding force and character of the judgments of the Dawes Commission and of the force and effect of the rolls of the Tribe as evidence. It will be remembered that in that case the Court declared that the Dawes Commission was expected to make mistakes; that the immense volume of work before it induced mistakes, but that their judgments whether perfectly correct or not, must be assumed to be correct and impervious to collateral attack. The doctrine announced in the Wildcat case was not new, because the Eighth Circuit Court, more than twenty years ago announced and continued to announce prior to the decision by the Supreme Court in the Wildcat case that the Dawes Commission was a judicial body and that its judgments were entitled to the same faith and credit as the judgments of any court of competent jurisdiction. The Wildcat case affirmed the opinions of the 8th Circuit and held that the proceedings of the Dawes Commission were in no sense ex parte, but concluded and settled the rights of all parties before the Commission forever. These Courts declared that the presence of the Creek Council when the Dawes Commission was enrolling, the presence of the attorney for the Creek people whose duty it was to watch the rolls and help purge them, made the the whole transaction a judicial trial; made the

judgment after such a trial a muniment of title in favor of the party who was actually enrolled by the commission.

Let us now consider what the Dawes Commission had to do when it came to the name of Thomas Atkins on the roll. The Commission took the roll of 1890 and examined it; it took the roll of 1895 and examined it, and, above all, took the corrected roll; that is, the exact roll known as the Creek pay roll, and examined it. On these rolls the Commission found the name of Thomas Atkins, and the Commission found that name accredited to the family of Minnie Atkins and found that Thomas Atkins accredited to Minnie as his mother. On the face of the rolls, the Thomas Atkins whom the Commission was examining was the son of Minnie Atkins; with these rolls before it and with the duty resting upon the Commission to determine if the rolls spoke the truth, the Commission took the evidence outside of the rolls and found that the Thomas Atkins on these rolls was, in fact, the son of Minnie Atkins, and found that he was living April 1, 1889, and entitled to enrollment. The Dawes Commission did this in order to assure itself that these rolls as to this particular Thomas Atkins, spoke the truth, and the Commission found that the rolls did speak the truth, because the evidence that the Commission took accorded in all things with the face of the rolls. Now we contend that these rolls, if they

showed on their face what Judge Sanborn held in this case on the first appeal, that the Thomas Atkins on these rolls was the son of Minnie Atkins, are at least presumptive evidence in favor of Minnie Atkins, against the world, and they must be broken down by clear and substantial proof. To state the matter in another way, the first thing the Dawes Commission did when it came to this particular Thomas Atkins, was to examine the rolls of the tribe; that examination showed beyond a doubt that the rolls of the tribe on their faces disclosed the particular Thomas Atkins which the Dawes Commission was considering, to be the son of Minnie Atkins. This being true, the Dawes Commission then followed up this examination of the rolls by taking evidence extraneous to the rolls and concluded that the rolls were correct and they denominated this particular Thomas Atkins as the son of Minnie. We say that these rolls, therefore, are, if not conclusive, presumptively correct, and we start out therefore with this much in our favor.

We, therefore, recur to the original question, who was the Thomas Atkins No. 7913 actually enrolled and intended to be enrolled by the Dawes Commission, and did he live after April 1, 1899? The rolls on their faces declare that he was the son of Minnie Atkins. These rolls were prepared and approved by the Creek people, who, of course, had a deep and abiding interest in making correct rolls. The evidence taken by the Commission

absolutely corresponds with the notations on the roll. Before we conclude here we desire to call attention of the Court to the specific findings of Judge Campbell, the trial Judge, which can be found on pages 140, 149 and 150 of the record. The learned trial Judge found that the Dawes Commission in acting in this particular case did not act arbitrarily and without evidence, but had before it substantial evidence as to the right of Thomas Atkins to enrollment and as to his being the son of Minnie Atkins. In this first finding, which we have just quoted substantially the learned Judge declared that not only did the Dawes Commission have a trial and hearing upon this matter, but had a trial and hearing as to the identity of the particular Thomas Atkins under consideration and had evidence as to his being the son of Minnie. In the next finding the trial Judge found that the Thomas Atkins enrolled as No. 7913 on the final roll of the Creek Indians is the son of the defendant, Minnie Folk, nee Atkins. The trial Judge found this separate, independent fact from an examination of all the evidence in this case, and after argument of counsel. The Court further found that the Thomas Atkins appearing on the 1895 authenticated roll of Creek Indians and later on the roll of Creek Indians as compiled by the Commission to the Five Civilized Tribes opposite No. 7913 and approved by the Secretary of the Interior was in fact the illegitimate child

of the said Minnie Folk, nee Atkins. And the Court in this particular finding said further that the said Thomas Atkins so enrolled was not the son of Nancy Atkins. Here the Court distinctly declared that from all the evidence in the case, the Thomas Atkins now under consideration was the son of Minnie and not the son of Nancy. And the Court further found specially, as he did in other findings, that Minnie Folk, nee Atkins, was the sole heir of that Thomas Atkins, and inherited the property now in controversy.

We beg to say that these findings show on their faces an exhaustive consideration of all the evidence by the trial court, and such findings carry with them great weight and cannot be easily overturned.

On page 144 of the record we quote from the memorandum opinion of Judge Campbell, which again reinforces our position as to the care with which he considered this case:

> "Time and space will not be taken to refer to nor analyze in detail, but after a most careful examination of all the evidence the Court finds that Minnie Atkins had an illegitimate male child born to her during the early part of June, 1885, at the home of a colored woman known as Granny Letcher in the City of Leavenworth, Kansas, and that she named this child Thomas Atkins."

Now here is a specific finding by the trial

court not only that Minnie was the mother of this particular Thomas Atkins, but is a finding as to the date of his birth and as to the place where he was born. On page 145 the trial court said this:

> "The Court further finds that prior to the compilation of the tribal roll now known as the 1895 authenticated roll of the Creek Tribe of Indians, Minnie Atkins had conveyed information to certain of her relatives in the Indian Territry of the fact of the birth of Thomas Atkins, which information was eventually imparted to the tribal authorities compiling the roll and that the name Thomas Atkins appearing at 213 of Euchee Town on the 1895 authenticated tribal roll was placed on said roll by the tribal authorities compiling the roll as the child of the defendant, Minnie Atkins, pursuant to such information. The Court finds that the Thomas Atkins appearing on the 1895 authenticated tribal roll and later on the Dawes Commission roll is in fact the illegitimate child of said Minnie Atkins, born, as aforesaid, in the city of Leavenworth, Kansas, in the early part of June, 1885, and is not the child of Nancy Atkins."

The learned Judge who tried this case below patiently read and considered the deposiion evidence in this case; he patiently heard and considered the oral evidence given in this case. It was voluminous; it required a great amount of care and attention. He solemnly adjudged that the claim of Minnie Atkins as to the birth and

parentage of Thomas Atkins enrolled by the Dawes Commission was true, and that the same Thomas Atkins was living on April 1, 1899, and entitled to enrollment. He held that the claim of Nancy Atkins was untrue.

In conclusion therefore, we beg to say respectfully, that there is no merit in the Government's case. The Government is defeated by reason of the fact that it has alleged no ground upon which a court of equity can act in reopening this case. It is defeated by reason of the circumstance that three courts have decided the questions of fact raised against the Government. It is defeated by reason of the circumstance that the finding of fact in this case by the Trial Court and by the Circuit Court of Appeals that Thomas Atkins was not a myth, was a just and correct finding of fact.

We therefore urge respectfully that this case ought to be in all things affirmed.

Respectfully submitted,

C. B. STUART,
LEE BOND
E. C. HANFORD
M. K. CRUCE,

Solicitors for Appellees, Minnie Folk (nee Atkins), Chas. Page et al.